Description: Commonwealth Coat of Arms

**A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities**

made under subclause 37(1) of Schedule 1 to the

*Telecommunications Act 1997*

**Compilation No. 3**

**Compilation date:** 1 January 2023

**Includes amendments up to:** Act No. 140, 2021

**About this compilation**

**This compilation**

This is a compilation of the *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities* that shows the text of the law as amended and in force on 1 January 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Federal Register of Legislation (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Federal Register of Legislation for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Federal Register of Legislation for the compiled law.

**Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**Chapter 1.**

**Introduction, background and scope**

**Background to Facilities Access Code**

Part 5 of Schedule 1 of the *Telecommunications Act 1997* (Part 5)

provides for Carriers to provide other Carriers with access

to telecommunications transmission towers, the sites

of telecommunications transmission towers and eligible

underground facilities.

Clause 37 of Part 5 empowers the Australian Competition and

Consumer Commission to make a code which sets out conditions

that are to be complied with in relation to the provision of access

under Part 5.

The Code is designed to encourage the co-location of facilities,

where reasonably practicable, and promote competition

by facilitating the entry of new mobile and fixed line operators.

The Explanatory Statement to the Code provides a detailed

introduction to and background information on the Code.

**Simplified outline of the code**

The Code is divided into six chapters and includes two Annexures

(A and B). The Chapters of the main code deal with the following:

Chapter 1 — introduction, scope and application of the code

Chapter 2 — mandatory conditions of access

Chapter 3 — general procedures concerning applying for

facilities access

Chapter 4 — general procedures for negotiating a facilities

access agreement

Chapter 5 — general procedures governing the implementation

of access

Chapter 6 — glossary of terms and interpretation

Annexure A establishes administrative and operational procedures

which specifically apply to telecommunications transmission

towers and sites of towers. Annexure B establishes the

administrative and operational procedures which specifically

apply to underground facilities.

**1.1 Preliminary**

**1.1.1 Citation**

This Code is called *A Code of Access to Telecommunications*

*Transmission Towers, Sites of Towers and Underground Facilities*.

For ease of reference, the Code may also be referred to as the

*Facilities Access Code.*

**1.1.2 Commencement**

This Code shall take effect on the date specified in the

Commonwealth of Australia Government Notices *Gazette.*

**1.1.3 Variations**

(1) From time to time, the provisions of the Code may be varied

by the ACCC.

(2) Carriers will be notified of variations to the Code before the

date of effect of such variations.

**1.1.4 Review**

The ACCC may review the Code at any time, for example,

in response to changes in relevant legislation, licence conditions

or lawful directions made by any Minister.

**1.2 Scope and application of the Code**

**1.2.1 Facilities**

The Code applies to the facilities specified in Part 5. For ease

of reference, these facilities are collectively referred to as *Eligible*

*Facilities* throughout the Code.

This Code does not apply to the extent (if any) it imposes an obligation on a designated Telstra successor company that has the effect of preventing the designated Telstra successor company from complying with an undertaking in force under section 577A of the *Telecommunications Act 1997*.

This Code does not apply to the extent (if any) it imposes an obligation on Telstra that has the effect of preventing Telstra from complying with an undertaking in force under section 577C or 577E of the *Telecommunications Act 1997* (theAct).

For the purposes of this Code, an NBN corporation is not taken to be the operator or controller of an Eligible Facility if:

1. there is an agreement in force between Telstra or a designated Telstra successor company and an NBN corporation,
2. the agreement relates to an NBN corporation’s access to an Eligible Facility owned or operated by Telstra or the designated Telstra successor company, and
3. apart from this provision, the agreement would result in the NBN corporation being the operator or controller of the Eligible Facility.

Note 1: see Chapter 5 for a full definition of Eligible Facilities.

Note 2: see Subclauses 33(8), 34(8) and 35(8) of Part 5 of Schedule 1 to the *Telecommunications Act 1997*.

**1.2.2 Agreements**

(1) Subject to sub-clause 1.2.2(2)-(4), a First and Second Carrier

may agree, in writing that particular conditions of access to

Eligible Facilities will prevail over those set out in the Code.

(2) Pursuant to sub-clause 1.2.2(1), such an agreement **must**

specify which provisions of the Code are to be displaced

by conditions of access of that agreement.

(3) Clauses contained in Chapter 2 of the main Code apply

notwithstanding any agreement to the contrary.

(4) A bi-lateral agreement made pursuant to sub-clause 1.2.2(1)

cannot displace multi-lateral obligations imposed on Carriers

by the Code.

**Chapter 2.**

**Mandatory conditions of access**

**2.1 Confidential information — all Carriers**

(1) Subject to sub-clause 2.1(4) and any statutory duties, a First

Carrier **must** keep confidential all Confidential Information

of the Second Carrier and a Second Carrier **must** keep

confidential all Confidential Information of the First Carrier

which:

(a) is disclosed, communicated or delivered to it in

connection with an application or agreement relating

to access to Eligible Facilities; or

(b) comes to its knowledge or into its possession in

connection with such an application or agreement;

and **must not**:

(c) use or copy such Confidential Information except for

the purposes of this Code; or

(d) disclose or communicate, cause to be disclosed

or communicated or otherwise make available such

Confidential Information to any third person.

(2) Information generated about a First or Second Carrier’s

network or facilities as a result of, or in connection with,

the provision of access to facilities is the Confidential

Information of that Carrier.

(3) Subject to sub-clause 2.1(4), Confidential Information

obtained by a First Carrier about a Second Carrier’s facilities

and Confidential Information obtained by a Second Carrier

about a First Carrier’s facilities **must** only be:

(a) used for the technical purpose of undertaking work

necessary to allow for facilities access or as required by

the ACMA, the ACCC or an independent expert appointed

in accordance with this Code; and

(b) as far as is reasonably practical, used by technical and

related personnel directly involved in the facilities

access task or in accordance with sub-clause 2.1(4).

(4) A First or Second Carrier (Disclosing Carrier) may disclose

the Confidential Information of a Second or First Carrier

(Other Carrier) respectively:

(a) to those of its directors, officers, employees, agents and

representatives to whom the Confidential Information is

reasonably required to be disclosed for the purposes of

a facilities access application or agreement; and

(b) to any professional person acting for the Disclosing

Carrier to the extent necessary to permit that person to

protect or advise on the rights of the Disclosing Carrier

in respect of the obligations of the Disclosing Carrier

under a facilities access agreement; and

(c) in connection with legal proceedings, arbitration, expert

determination and other dispute resolution mechanisms

or for the purpose of seeking advice from a professional

person in relation thereto; and

(d) as required by law provided that the Disclosing Carrier

has first notified the Other Carrier that it is required to

disclose the Confidential Information so that the Other

Carrier has an opportunity to protect the confidentiality

of its Confidential Information; and

(e) as required by the listing rules of any stock exchange

where a Disclosing Carrier’s securities are listed or

quoted; and

(f) with the consent of the Other Carrier; and

Note: Sub-clause 2.1(6) provides that a condition of consent may be the

acceptance of confidentiality obligations by the person to whom the

Confidential Information is disclosed.

(g) in accordance with a lawful and binding direction

issued by the ACMA or the ACCC or any Minister; and

(h) if reasonably required to protect the safety of personnel

or equipment; and

(i) as required by this Code.

(5) First and Second Carriers **must** establish and observe

procedures adequate to protect the Confidential Information

of the other First or Second Carrier with which it is engaged

in relation to facilities access and **must** ensure that each of

its directors, officers, employees, agents and representatives

to whom that Confidential information is disclosed,

in connection with a facilities access application or

agreement, is subject to and maintains the confidentiality

obligations of this clause.

(6) If required by the Other Carrier, as a condition of it giving its

consent to the disclosure of the Confidential Information of

that Other Carrier, the Disclosing Carrier, before disclosing

Confidential Information to a third person (the disclosee),

**must**:

(a) impose an obligation upon the disclosee:

(i) to use the Confidential Information disclosed solely

for the purposes for which the disclosure is made

and to observe appropriate confidentiality

requirements in relation to such information; and

(ii) not to disclose the Confidential Information without

the prior written consent of the Disclosing Carrier;

and

(b) obtain an acknowledgment from such a disclosee that:

(i) the Confidential Information is, and at all times

remains, proprietary to the Other Carrier; and

(ii) misuse or unauthorised disclosure of the

Confidential Information will cause serious harm

to the Other Carrier

unless disclosure is made to a third party which is the

Commonwealth or a State Government or a statutory

authority in compliance with a requirement imposed

by statute.

(7) First and Second Carriers **must** cooperate to:

(a) protect the confidentiality of the other Carrier’s

Confidential Information; or

(b) enforce rights in relation to its Confidential Information.

(8) Confidential Information provided by a First or Second

Carrier to the other Carrier with which it is engaged in

relation to facilities access is provided for the benefit of that

other Carrier only. First and Second Carriers **must**

acknowledge that no warranty is to be given by a Disclosing

Carrier that Confidential Information is or will be correct.

**2.2 Non-discriminatory access to Eligible**

**Facilities**

(1) Carriers **must**, in relation to the provision of access to

Eligible Facilities, as far as practicable, treat other Carriers

on a non-discriminatory basis. For a First Carrier, this would

include taking all reasonable steps to ensure that, as far as

practicable, having regard to its legitimate business interests

and the interests of third parties, that the Second Carrier

receives timely provision of access that is equivalent to that

which the First Carrier provides to itself.

(2) The non-discrimination principles referred to in

sub-paragraph 2. 2(1) do not apply to the extent that it is not

reasonably practicable for parties to receive equivalent

access. In such circumstances, the First Carrier **must** ensure

that access is provided in a manner consistent with the

queuing policy principles set out in clause 2.3 of the main

Code.

(3) The non-discrimination principles are not intended to limit

a Second Carrier’s ability to obtain, on request, access of

a lower quality than that which the First Carrier provides

to itself, subject to technical feasibility.

(4) The non-discrimination principles are not intended to limit

a Second Carrier’s ability to obtain, on request, access of

a superior quality than that which the First Carrier provides

to itself, provided always that the First Carrier will not be

required to accept such a request.

**2.3 Queuing policy**

(1) The First Carrier **must** develop a queuing policy for

applications for the supply of access to an Eligible Facility.

(2) Subject to the legislative requirements of Part 5 to provide

access to Second Carriers, the queuing policy **must** include

the First Carrier’s applications and orders.

(3) The queuing policy **must** be consistent with the following

principles:

(i) the queuing policy of the First Carrier **must** be

non-discriminatory; and

(ii) subject to paragraph (i) above, the First Carrier **must**

seek to maximise the efficiency of its queuing policy. Subject to sub-clauses (7) and (8), this includes a requirement that a Facilities Access Application must be removed from the queue for a Tower and/or Tower Site after 24 months from the date that application was accepted, if the Carrier has not commenced ordering and/or installing Equipment on or in that Tower and/or Tower Site. The Carrier may then lodge a new Facilities Access Application.

1. The queuing policy must apply to a First Carrier’s :

(i) review of applications before being accepted or

rejected; and

(ii) its fulfilment of accepted Facilities Access Applications.

(5) The First Carrier **must**, within five Business Days of receipt

of a Facilities Access Application, notify the Second Carrier

of its acceptance on a queue in relation to its review

of applications.

(6) The queuing policy **must** provide that a Second Carrier

may prescribe the order in which applications placed

simultaneously by it with the First Carrier should be treated

in a queue.

(7) Paragraph 2.3(3)(ii) does not apply to Facilities Access Applications submitted before the commencement of the *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities Amendment 2020 (No. 1)*.

(8) In circumstances where:

1. a Facilities Access Application from a Carrier has been accepted in the period ending six months after the commencement of the *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities Amendment 2020 (No. 1)*; and
2. the Carrier has not, within 30 months of that Facilities Access Application being accepted, commenced ordering and/or installing Equipment on or in that Tower and/or Tower Site to which that Facilities Access Application relates;

the Facilities Access Application must be removed from the queue.

**2.4 Dispute Resolution — the giving of access**

(1) In the event that a dispute arises in negotiations over the

terms and conditions of a Master Access Agreement or over

access to a particular Eligible Facility (or Facilities), Carriers

**must** engage in their own dispute resolution and, if necessary, mediation.

(2) In attempting to resolve disputes pursuant to sub-clause

2.4(1), Carriers **must** have regard to:

(a) the criteria the ACCC must take into account if it

is required to make a determination on terms and

conditions under clause 36 of Part 5 of Schedule 1

of the Telecommunications Act; and

Note: see *Telecommunications (Arbitration) Regulations*, Statutory Rules

1997 No. 350, clause 8.

(b) any relevant principles or guidelines published by

the ACCC that may be relevant to the arbitration of

a dispute.

Note: see *Access Pricing Principles — Telecommunications*, ACCC,

November 1998 and Attachment A of the Explanatory Statement.

(3) In the event that Carriers cannot resolve disputes pursuant

to sub-clause 2.4(1), Carriers **must** make reasonable

endeavours to refer a matter in dispute for arbitration by

an agreed independent expert other than the ACCC. Carriers

may agree to accept a nominee of the Australian

Commercial Disputes Centre.

(4) Pursuant to sub-clause 2.4(3), Carriers **must** comply with the

determination of an independent expert.

(5) In making a determination under sub-clause 2.4(3),

an independent expert may consult with the ACMA.

(6) In the event that Carriers cannot resolve a dispute pursuant

to sub-clause 2.4(3), Carriers **must** refer the matter in dispute

to the ACCC for arbitration.

(7) Carriers **must** ensure that dispute resolution measures

required by this clause are conducted by persons with

sufficient decision-making authority consistent with timely

dispute resolution.

**2.5 Dispute Resolution — implementation of**

**access**

(1) The terms and conditions on which access is agreed **must**

include arrangements for the settlement of a dispute about

the ongoing provision or implementation of access which

are consistent with sub-clauses 2.4(1)-(5).

(2) In the event that a dispute arises in relation to the ongoing

provision or implementation of access, Carriers **must** make

reasonable endeavours to resolve the dispute in accordance

with the agreed dispute resolution arrangements made

pursuant to sub-clause 2.5(1).

(3) Carriers **must** ensure that dispute resolution measures

required by this clause are conducted by persons with

decision-making authority consistent with timely dispute

resolution.

**2.6 Timeframes**

1. The timeframes for particular processes associated with the

provision of access, as set out in the Code, must apply unless

a Carrier considers it would not be reasonably practicable for it

to comply with the specified timeframes. In these circumstances,

Carriers must make reasonable endeavours to agree to amended

timeframes.

1. Carriers must engage in dispute resolution, as set out in Chapter 2 of the main Code, if agreement cannot be reached on amended timeframes.

**Chapter 3.**

**Applying for Access**

**3.1 Information Package**

(1) The First Carrier **must** establish and maintain an Information

Package in relation to the provision of access to particular

Eligible Facilities or classes of Eligible Facilities.

Note: classes of Eligible Facilities include telecommunications transmission

towers, sites of telecommunications transmission towers and

underground facilities, as defined in clause 31 of Part 5 of Schedule

1 of the Act.

(2) The Information Package **must** be provided to any Second

Carrier who requests it in writing from the First Carrier

within five Business Days of such a request.

(3) If the Information Package is amended by the First Carrier,

it **must**, within three Business Days of those amendments

being made, provide a copy of the amendments, or an

amended copy of the Information Package, to:

(a) Second Carriers who are being provided with access

to Eligible Facilities; and

(b) any Second Carriers who have requested an Information

Package within the period ninety days prior to the

making of those amendments, unless a Second Carrier

has indicated that it does not wish to proceed with

an access application.

(4) The Information Package **must** be consistent with this Code

and contain at least the following information:

(a) the name and address of the First Carrier and contact

details of its Proper Officer;

Note: see clause 3.3 for the functions and responsibilities of a Proper

Officer.

(b) to the extent relevant, an outline of how access to the

First Carrier’s classes of Eligible Facilities is to occur and

the physical arrangements for installing relevant

Equipment and arrangements for accessing such

Equipment, including a pro-forma Physical Inspection

Notification;

Note: see clause 1.2 of Annexure A and Annexure B for the use

of a Physical Inspection Notification;

(c) a summary of the First Carrier’s ordering and

provisioning arrangements for installing Equipment and

arrangements for accessing such Equipment;

(d) an indication of the time and major milestones likely

to be required to enable access to Eligible Facilities to

be supplied to the Second Carrier, including any credit

assessments which may be conducted and the types

of security that may be required;

(e) Financial Security Requirements which the First Carrier

may require from the Second Carrier;

Note: see clause 4.3 of the main Code for provisions concerning Financial

Security Requirements.

(f) details of any Confidentiality Agreement which the First

Carrier requires from the Second Carrier, the terms and

conditions of which should be consistent with this

Code; and

(g) any credit assessment pro-forma and application form

to be completed by the Second Carrier.

**3.2 Other information requirements**

(1) The First Carrier **must**, when requested by a Second Carrier,

provide within fifteen Business Days, general information

in relation to the type and location of Eligible Facilities and any plans to establish new Towers or Tower Sites in a

particular Postcode Area and, on request, use its reasonable

endeavours to provide further information, as required, that

may be relevant to a Second Carrier’s decision to seek

access.

(2) The Second Carrier’s request **must** be for the purpose

of facilitating bona fide negotiations between the First and

Second Carrier regarding access to Eligible Facilities.

Note: clauses 33(2)(a), 34(2)(a) and 35(2)(a) of Part 5 state that a First

Carrier is not required to provide access to a facility unless the access

is provided for the sole purpose of enabling the Second Carrier to

install a facility used, or for use, in connection with the supply

of a carriage service.

**3.3 Proper Officer**

(1) First and Second Carriers **must** appoint an employee or

representative with the responsibility for the administration

of access to Eligible Facilities under Part 5 (Proper Officer).

(2) The Proper Officer of a First or Second Carrier **must** use

reasonable endeavours to consult with his or her counterpart

from another Carrier regarding the matters set out in this

Code, with a view to resolving any difficulties and to ensure

compliance with this Code.

(3) First and Second Carriers **must** ensure that their Proper

Officer has adequate authority to effectively conduct his

or her responsibilities under this Code.

(4) A Proper Officer may delegate his or her functions to one

or more persons and **must** notify the other party of any

functions so delegated and the name and contact details

of the delegate.

(5) The responsibilities of each Proper Officer **must** include

at least the following:

(a) in the case of a First Carrier, processing requests for

access to Eligible Facilities; and

(b) in the case of a Second Carrier, preparation and

lodgement of requests for access to Eligible Facilities;

and

(c) in the case of both parties:

(i) coordination of activities so that each party performs

its responsibilities in relation to Make Ready Work;

and

(ii) receipt of notifications concerning defects, faults

or other problems and ensuring compliance with its

established emergency and maintenance procedures;

and

(iii) discussion of, and making reasonable endeavours

to agree on, matters relating to access applications,

including any proposal to reject an application.

**3.4 Facilities Access Applications**

A Second Carrier seeking access to a particular Eligible Facility or

Facilities **must** submit a Facilities Access Application in

accordance with the relevant procedures and timeframes for

making such an application, as set out in Annexure A or B.

**3.5 Forecast Information**

(1) For the sole purpose of assisting the First Carrier with the

administration of access procedures under this Code, the

Second Carrier **must**, if requested by the First Carrier,

provide the First Carrier with estimates of future

requirements for access to those Eligible Facilities that

it reasonably requires (Forecast Information) to enable the

First Carrier to provide for access to Eligible Facilities.

(2) Any estimates of future requirements provided by the Second

Carrier to the First Carrier **must** be given in good faith.

**Chapter 4.**

**Negotiating access**

**4.1 General**

Negotiations undertaken for the purpose of securing agreement for

facilities access **must** be undertaken in good faith and be entered

into and conducted in a timely manner.

**4.2 Master Access Agreement**

(1) If a Second Carrier has requested access to an Eligible

Facility of a First Carrier, or indicated an intention to make

such a request, and no existing Master Access Agreement

applies in relation to the Eligible Facility to which the

Second Carrier is seeking access, the First and Second

Carriers **must** make reasonable endeavours to negotiate

a Master Access Agreement, where that Agreement covers

general or standard terms and conditions by which the

Second Carrier will obtain access to the Eligible Facilities

of the First Carrier (or a class thereof).

(2) A Master Access Agreement applies to all applications made

by a Second Carrier for access to facilities of a class covered

by the Master Access Agreement prior to the termination of

the Master Access Agreement.

(3) A Master Access Agreement **must** have a termination date.

(4) A Master Access Agreement may, without limitation,

deal with:

(a) ordering and provisioning procedures for access;

(b) operation and routine maintenance procedures;

(c) arrangements for dealing with delays in the delivery

of access;

(d) supervisory procedures required by either party, to the

extent necessary, in relation to the performance of Make

Ready Work;

(e) dispute resolution procedures;

(f) charges;

(g) financial security requirements;

(h) credit assessment procedures (both initial and ongoing);

(i) confidentiality;

(j) indemnities;

(k) any licence agreement to be entered into in respect

of a grant of access to an Eligible Facility;

(l) reasonable Forecast Information to be provided,

as described in clause 3.5 of the main Code;

(m) technical specifications relating to matters to be agreed

by the Carriers, including technical specification of

Towers and for attachment of Equipment to Towers, and

occupational and health and safety standards;

(n) relevant radio frequency, electromagnetic, operational

and engineering practices and procedures as agreed

between the Carriers;

(o) Carriers’ respective rights and obligations in relation

to physical access to Eligible Facilities, including what

work should be carried out and when that work will

be carried out;

(p) the Carriers’ respective rights and obligations in relation

to physical access to Eligible Facilities for the purpose

of maintenance, as well as security and access-

coordination procedures;

(q) emergency response procedures;

(r) procedures for access to an Eligible Facility by Third

Party Users; and

(s) such other procedures as the Carriers may, from time

to time, determine to be necessary for the due and

proper joint operation of an Eligible Facility.

(5) The Master Access Agreement may also require the Second

Carrier to maintain with insurers approved by the First

Carrier (which approval shall not be unreasonably withheld),

in the name of the First Carrier and the Second Carrier, for

their respective rights and interests, workers’ compensation,

public risk and other insurances which a prudent person

engaged in a similar business or undertaking to the Second

Carrier would effect or as reasonably specified by the First

Carrier.

(6) The Carriers **must** make reasonable endeavours to agree

on procedures in a Master Access Agreement for coordinated

scheduling of maintenance of their respective Equipment

used on or in an Eligible Facility. These procedures **must**

reflect the following principles:

(i) the First Carrier **must** perform any necessary

maintenance when temporary decommissioning occurs,

if reasonably practicable;

(ii) regular shutdown periods of determinate length (Access

Windows) **must** be scheduled within which the Carriers

can undertake regular scheduled work on their

Equipment (if they are a First or Second Carrier) and/or

Eligible Facility (if they are the First Carrier); and

(iii) each Access Window period should be scheduled

to occur at a time of low demand for the Carrier’s

networks and also when it is reasonably practical

to perform maintenance work.

(7) The Carriers **must** make reasonable endeavours to agree on

procedures in a Master Access Agreement for unscheduled

maintenance of their respective Equipment used on or in an

Eligible Facility outside a scheduled Access Window.

As a general principle, if maintenance work can be

reasonably delayed until the next scheduled Access Window,

then it should be delayed. In the event that maintenance

work cannot be reasonably delayed, Carriers **must**

co-operate to enable the maintenance work to be

undertaken, including, where necessary, powering down

their own antennas at no cost to any other Carrier.

**4.3 Financial matters**

(1) If the parties are unable to agree on terms of access because

the First Carrier has reasonable concerns that the Second

Carrier:

(i) is not creditworthy; and/or

(ii) has repeatedly failed to comply with the terms and

conditions on which the same or similar access has

been provided (whether or not by the First Carrier); then

the Carriers **must** comply with the following provisions,

as appropriate:

(a) The First Carrier **must** provide the following information

to the Second Carrier if the First Carrier has reasonable

concerns as specified in sub-clause 4.3(1)(i):

(i) specific evidence as to why the First Carrier believes

the Second Carrier would not be able to meet

its financial obligations with respect to access;

(ii) any independent supporting evidence of that

position; and

(iii) any other relevant information.

(b) The First Carrier **must** provide the following information

to the Second Carrier if the First Carrier has reasonable

concerns as specified in sub-clause 4.3(1)(ii):

(i) written evidence of any previous failures by the

Second Carrier to comply with terms and conditions

of which the First Carrier is aware;

(ii) a written description of the Eligible Facility to which

the previous failure relates; and

(iii) any other relevant information.

(c) A First Carrier making an assessment of creditworthiness

for the purpose of sub-clause 4.3(1)(i) **must not** take into

account amounts outstanding for access or services

previously provided by the First Carrier to the Second

Carrier where, in accordance with the terms and

conditions governing the provision of such access

or services, the Second Carrier is not required to pay

such amounts (including a temporary suspension of the

obligation to pay) to the First Carrier to the extent that

there is a bona fide dispute in relation to the amounts

outstanding by the Second Carrier to the First Carrier.

(d) If the First Carrier has reasonable concerns as set out

in sub-clause 4.3(1)(i) and 4.3(1)(ii) it **must**, as soon

as reasonably practicable, discuss and make reasonable

endeavours to resolve those concerns with the Second

Carrier.

(2) The parties **must** consider whether Financial Security

Requirements are necessary to overcome the First Carrier’s

concerns to enable that Carrier to agree on the terms

of access.

(3) The Financial Security Requirements (including the type and

quantum) required by the First Carrier **must** be proportionate

to the type and quantum of access to an Eligible Facility,

having regard to:

(i) the creditworthiness information provided by the

Second Carrier and legitimately acquired by the First

Carrier

in respect of the Second Carrier;

(ii) the Forecast Information provided by the Second Carrier

and, accordingly, the likely credit to be provided by the

First Carrier to the Second Carrier;

(iii) the Second Carrier’s previous record of payment,

whether with the First Carrier or not, in respect of the

supply of other goods or services and/or the supply

of access to other similar Eligible Facilities;

(iv) security previously required by the First Carrier from the

Second Carrier;

(v) goods or services supplied by the First Carrier to the

Second Carrier; and

(vi) any other information which is relevant to the credit

reasonably likely to be provided by the First Carrier

to the Second Carrier.

(4) Pursuant to sub-clause 4.3(3), in the event that Carriers are

unable to agree on Financial Security Requirements, Carriers

**must** engage in dispute resolution, as set out in Chapter 2

of the main Code.

(5) The type and quantities of the Financial Security

Requirement may be varied from time to time in accordance

with any agreed procedure for varying Financial Security

Requirements between the parties.

**4.4 Performing Make Ready Work**

(1) The Second Carrier may decide to perform the Make Ready

Work (MRW) required for it to be provided with access to a First

Carrier’s Eligible Facility, subject to that Second Carrier,

or its representative, being suitably qualified to perform that

Make Ready Work.

Note: ‘Make Ready Work’ is defined in Chapter 6 of the main Code.

Note: Schedule A2 of this Code sets out the administrative and operational

procedures which are to apply if the Second Carrier is to carry out

Make Ready Work for access to Towers and Tower Sites. Schedule

B2 of this Code sets out the administrative and operational

procedures which are to apply if the Second Carrier is to carry out

Make Ready Work for access to Underground Facilities.

(2) In the event that the First Carrier does not consider that the

Second Carrier or its representative is qualified to perform

the MRW on or in its Eligible Facility, then both Carriers

**must** make reasonable endeavours and act in good faith

to resolve issues of concern.

(3) Pursuant to sub-clause 4.4(2), in the event that Carriers are

unable to agree on whether a Second Carrier or its

representative is suitably qualified to perform Make Ready

Work, Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code.

(4) Carriers, or their representatives, **must** not do or omit

to do anything in connection with carrying out Make Ready

Work which might significantly interfere with;

• the delivery of carriage services supplied by other

Carriers; or

• any Equipment of Third Parties located at, on or in an

Eligible Facility such that the performance level of the

Equipment or Eligible Facility falls below accepted

industry standards.

(5) The First Carrier is required to perform Make Ready Work

only if:

• Carriers agree, or it has been independently determined

that, the Second Carrier or its representative is not

qualified to perform the MRW on or in a particular

Eligible Facility; or

• there are no qualified contractors who are able

to perform the Make Ready Work within a reasonable

timeframe requested by the Second Carrier.

Note: Schedule A1 of this Code sets out the administrative and operational

procedures which are to apply if the First Carrier

is to carry out Make Ready Work for access to Towers and Tower

Sites. Schedule B1 of this Code sets out the administrative and

operational procedures which are to apply if the First Carrier is to

carry out Make Ready Work for access to Underground Facilities.

(6) If the Make Ready Work involves moving or working on

Equipment of the First Carrier, or a Third Party User, then the

First Carrier may choose to carry out the Make Ready Work

relating to that Equipment.

(7) If the First Carrier exercises its right pursuant to sub-clause

4.4(6), then the Carriers **must** meet to discuss the extent

to which each party will contribute to the Draft Construction

and Work Plan and perform the Make Ready Work. If Make

Ready Work is to be performed by both the First Carrier and

the Second Carrier, then the Carriers **must** agree on

a procedure which is a combination of Schedules A1 and

A2 for Towers and/or Tower Sites or Schedules B1 and B2 for

Underground Facilities.

Note: The Draft Construction and Work Plan for Towers and/or Tower Sites

is defined in sub-clause 1.1(2) of Schedule A2 of Annexure A and for

Underground Facilities in sub-clause 1.1(2) of Schedule B2 of

Annexure B.

(8) Further to sub-clause 4.4(7), in the event that Carriers are

unable to agree on a procedure, Carriers **must** engage in

dispute resolution, as set out in Chapter 2 of the main Code.

**4.5 Co-location Consultation Process**

(1) Carriers may choose to initiate or participate in

a Co-location Consultation Process, as defined in this clause,

in relation to the development of a new Eligible Facility

or Facilities.

Note: Clause 38 of Part 5 of Schedule 1 of the Act requires Carriers,

in planning the provision of future carriage services,

to co-operate to share sites and eligible underground facilities.

(2) A Co-location Consultation Process involves a Carrier

(Requesting Carrier) making reasonable attempts to inform

all other Carriers (Non-requesting Carriers) that it has plans

to establish a new Eligible Facility in a particular Postcode

area and that it requests other Carriers to consider

establishing a Shared New Site or Shared New Underground

Facility, including as a result of a request from a local

council or other relevant body.

(3) As part of the Co-location Consultation Process, a Non-

requesting Carrier(s) **must** inform the Requesting Carrier

whether it wishes to establish a Shared New Site or Shared

New Underground Facility within thirty Business Days of the

Requesting Carrier’s request. If a Non-requesting Carrier

does not respond during that period then that Carrier will

be deemed to have rejected that request.

(4) If Carriers agree, pursuant to sub-clause 4.5(2), to establish

a Shared New Site or Shared New Underground Facility,

upon identification of a site as a potential Shared New Site

or location of a Shared New Underground Facility, the

Requesting Carrier **must** submit to those other Carriers which

propose to share that Shared New Site or Shared New

Underground Facility (the Proposed Sharers), a proposal for

sharing the Site or Facility (a Sharing Proposal), containing

particulars of the Site or Facility including:

• its location;

• an estimate of the make ready costs;

• the Requesting Carrier’s proposal as to development

of the Site or Facility;

• the time frame in which that development will occur;

and

• nomination as to which Carrier will be the Site or

Facility owner and the party with power to grant rights

of occupation thereon.

(5) Within twenty Business Days of receipt of a Sharing

Proposal, each Proposed Sharer **must** notify the Requesting

Carrier in writing that:

(i) it accepts the Sharing Proposal; or

(ii) it requires more information in relation to the Sharing

Proposal whereupon the Requesting Carrier **must**

provide the requested information within five Business

Days of the date on which the request is made; or

(iii) it rejects the Sharing Proposal.

(6) If parties to a Sharing Proposal are unable to agree on any

aspect of the Sharing Proposal, including the terms and

conditions of the Sharing Proposal, then the parties **must**,

at the request of any party, seek to resolve the dispute in

accordance with chapter 2 of the main Code.

(7) If a request, under sub-clause 4.5(2), or a Sharing Proposal,

under 4.5(4), is rejected:

(a) if requested, the rejecting Carrier **must** produce

a written explanation of why it has rejected the request

or Sharing Proposal;

(b) following (a), the rejecting Carrier or the Requesting

Carrier may request a meeting to discuss the reasons for

the rejection. If such a request is made, the Carriers

**must** meet within five Business Days and **must** use their

reasonable endeavours to develop an amended Sharing

Proposal or a strategy for managing the sharing of the

Site or Facility which addresses the reasonable concerns

of the Proposed Sharer;

(c) the Requesting Carrier or the Proposed Sharer may

submit an amended Sharing Proposal in respect of the

same Eligible Facility at any time, and the proposal will

be considered as though it were a new Sharing Proposal

submitted in accordance with paragraph 4.4(4).

(8) The Carriers **must** co-operate in the provision of information

to one another and the submission of relevant plans

regarding proposed future uses of an Eligible Facility

each is seeking, including specifications or plans for the

Equipment that each of them intends to locate on or in the

Eligible Facility.

(9) In recognising the commercial sensitivity and value of

information which each Carrier may provide to the other

in relation to the Sharing Proposal, each Carrier **must**

protect the confidentiality of information disclosed by the

other Carrier pursuant to this clause and otherwise, as

contemplated by the confidentiality provisions of Chapter 2

of the main Code.

**Chapter 5.**

**Implementing facilities access**

**5.1 Maintenance of Eligible Facility and**

**Equipment**

(1) Subject to sub-clause 5.1(2), the First Carrier is responsible

for maintaining the Eligible Facility to which access has been

granted in a safe and operable condition.

(2) The First Carrier is not required to undertake the structural

repair of an Eligible Facility in the event that that repair

would involve the reconstruction of the Eligible Facility.

(3) Carriers are responsible for the maintenance of their

respective Equipment. This includes being responsible for

the safe operation of their Equipment and taking all

reasonable and necessary steps to ensure that its Equipment

does not:

(i) endanger the safety or health of the officers, employees,

contractors, or agents or customers of another Carrier

or Third Party User; nor

(ii) damage, interfere with or cause any deterioration in

the operation of another Carrier’s Eligible Facility or

Equipment or the Equipment of a Third Party User.

(4) Once the location of a Second Carrier’s Equipment on or

in an Eligible Facility has been determined, and any part

of it installed, the First Carrier **must not** (except with the

consent of the Second Carrier, which **must not** be

unreasonably withheld) require that it be relocated

elsewhere on or in a Facility. A Second Carrier is not

required to consent to the relocation of its Equipment unless

the First Carrier pays the reasonable cost of such relocation

and the location to which the Equipment is relocated does

not result in a material reduction of amenity in its use.

**5.2 Emergency Work**

(1) Where, for the purposes of a First Carrier undertaking

emergency work in relation to an Eligible Facility, the

Equipment of another Carrier has to be turned off or

powered down or disabled (as the case may be), or the First

Carrier requires assistance in relation to the other Carrier’s

Equipment, the First Carrier **must** notify the other Carrier and

that Carrier will dispatch personnel on an emergency basis

to the Eligible Facility, in accordance with the same

procedures and time frames as that Carrier would respond

to in an emergency relating to its own Equipment in use on

or in a similar Eligible Facility where it was the First Carrier.

(2) If a Carrier becomes aware of a fault, defect or problem with

another Carrier’s Equipment on or in an Eligible Facility

which causes, or there is a reasonable risk that it might

cause, damage to that Eligible Facility and/or to that Carrier’s

Equipment, the Carrier:

(a) **must** notify the other Carrier as soon as practicable; and

(b) where there is an immediate risk of personal injury or

significant property damage (including to equipment of

the other Carrier or a Third Party User), may take interim

measures reasonably necessary in relation to the other

Carrier’s Equipment to prevent such injury or damage,

pending the attendance by the other Carrier’s personnel

to perform the required corrective work.

**5.3 Replacement of Equipment**

(1) Subject to sub-clause 5.3(2), on giving ten Business Days’

prior written notice to any other Carrier which is using an

Eligible Facility, a Carrier may replace Equipment currently

located on or in an Eligible Facility with similar or new

design Equipment provided:

(a) the Carriers agree that the new Equipment will not

result in or cause:

(i) significant difficulties of a technical or engineering

nature, including adversely affecting the structural

integrity, stability and safety of the Eligible Facility;

or

(ii) significant interference with the delivery of carriage

services supplied by other Carriers; or

(iii) significant interference with any Equipment of Third

Party Users located on or in an Eligible Facility such

that the performance level of the Equipment falls

below accepted industry standards; or

(iv) a significant threat to the health or safety of persons

who operate, or work on or in the Eligible Facility

and

(b) the replacement work takes place within an Access

Window or some other time agreed to by all Carriers;

and

(c) the replacement Equipment does not interfere with any

other Equipment installed on or in the Eligible Facility;

and

(d) the Carrier complies with the requirements of a facilities

access agreement and Master Access Agreement.

(2) Carriers, as part of a facilities access agreement, may

establish different procedures for the replacement of

Equipment in certain circumstances, such as, in relation

to an Underground Facility, where the Equipment of

a Second Carrier is housed in a separate sub-duct.

(3) In relation to sub-clauses 5.3(1) and 5.3(2), a First Carrier

**must** not unreasonably withhold its agreement. If a First

Carrier does not agree to the replacement of existing

Equipment then the First Carrier **must** follow the procedures

set out in Clause 2.3 of Annexure A and B, modified as

appropriate.

**5.4 Interference with Equipment**

(1) A Carrier **must** not do anything, or knowingly permit any

Third Party User to do anything, in relation to an Eligible

Facility, which causes interference or materially obstructs,

interrupts or impedes the continuous use or operation of any

Equipment of another Carrier or a Third Party User’s

Equipment. This clause does not apply to the extent that

an interruption in the use or operation of Equipment is

necessary for the installation or maintenance of Equipment

or for a Carrier to respond to an emergency.

(2) In the event of one Carrier (the Notifying Carrier) advising

another Carrier of any interference allegedly caused by a

breach by that Carrier of clause 5.4(1), subject to sub-clause

5.4(4) and 5.4(5), that Carrier **must** expeditiously remedy

such a breach.

(3) In addition to the obligations under sub-clause 5.4(2), if a

Notifying Carrier advises another Carrier of any interference

allegedly caused by a breach by that Carrier of sub-clause

5.4(1) and the advice is given within one week of:

(a) the Carrier installing new or additional Equipment; or

(b) the Carrier commissioning new or additional

Equipment;

then that other Carrier **must** remedy that breach as soon

as possible and, in any event, within 24 hours.

(4) If, within 48 hours of receiving notification of the

interference, a Carrier is not able to reasonably demonstrate

to a Notifying Carrier that interference is not being caused

by that Carrier’s use of the Eligible Facility, the Carriers **must**

make reasonable endeavours to appoint an independent

expert to determine the cause of the interference and,

if caused by either Carrier, how the interference is to

be eliminated.

(5) If the determination of the independent expert is that

a Carrier is causing the interference and eliminating such

interference requires removing or relocating that Carrier’s

Equipment, that Carrier **must** do so within 48 hours of the

independent expert notifying the Carrier of its determination.

In the case of a Tower and/or Tower Site, the First Carrier **must**,

at the expense of the Second Carrier, accept a surrender

or a variation of the Tower Sub-Lease and/or Tower Site

Sub-Lease if such surrender or variation is reasonably required

as a result of the determination of the independent expert.

**5.5 Indemnity in respect of property damage**

(1) In relation to matters of, and relating to, liability between

the Carriers not governed by the terms of any agreement,

a Carrier which, through its acts or omissions (whether

negligent or otherwise), causes damage to the Eligible

Facility or the Equipment of another Carrier in use on or

in an Eligible Facility, then that Carrier **must** indemnify the

other Carrier against such damage to its Eligible Facility or its

Equipment and any reasonable costs or expenses associated

with such repair or replacement.

(2) Pursuant to sub-clause 5.5(1), in the event that Carriers are

unable to agree on costs or expenses, Carriers **must** engage

in dispute resolution, as set out in Chapter 2 of the main

Code.

**5.6 Third Party User Equipment**

(1) The Second Carrier **must** acknowledge that the First Carrier

may agree to a Third Party User installing its Equipment on

or in an Eligible Facility provided that the Third Party User’s

Equipment does not interfere in a material way with any of

a Second Carrier’s Equipment. Where there is a significant

risk to the integrity of the Second Carrier’s network, the First

Carrier **must** consult with a Second Carrier sharing the same

Eligible Facility to ensure that there is no interference with

a Second Carrier’s Equipment.

(2) The First Carrier **must** require a Third Party User to agree

to comply with terms consistent with clause 5.4 of the Code

in relation to the Third Party User’s use of the Eligible Facility

and, further, that agreement **must** include suitable

indemnities by the Third Party User against damage to

persons or property affording protection for liability and/or

loss to all parties who share the Eligible Facility.

(3) If the equipment of a Third Party User needs to be moved,

powered down or turned off in order for the Second Carrier

to install or maintain its Equipment, the Second Carrier is

responsible for liaising with that Third Party User.

**5.7 Suspension of Access**

(1) The First Carrier may give a Suspension Notice to the Second

Carrier after becoming aware of a Suspension Event.

A Suspension Notice **must**:

(a) cite this paragraph;

(b) specify the Suspension Event and the applicable Eligible

Facility in respect of which the event has occurred;

(c) require, if necessary, the Second Carrier to institute

remedial action in respect of that event; and

(d) specify action which may follow due to a failure to

comply with action required by sub-clause 5.7(1)(c).

Note: A Suspension Event is defined in Chapter 6.

(2) If the Second Carrier fails to institute remedial action, as

specified in the Suspension Notice, within twenty Business

Days of receiving the Suspension Notice (Remedy Period),

the First Carrier may, by notice given to the Second Carrier

within twenty Business Days after the expiry of the Remedy

Period:

(a) refuse to provide the Second Carrier with access

to Eligible Facilities of a kind similar to that which the

Suspension Event relates to; and

(b) suspend the provision of access to the particular Eligible

Facility in respect of which the Suspension Event has

occurred by requiring the Second Carrier to remove

its Equipment from that Eligible Facility;

until the remedial action specified in the Suspension Notice

has been taken.

(3) The First Carrier **must** permit the Second Carrier access to

its Eligible Facility to permit remedial action to be taken.

(4) The First Carrier **must** provide the Second Carrier with

access to the Eligible Facility as soon as practicable after

there no longer exists a reason for suspension and **must**

do so at a reasonable cost to the Second Carrier.

**5.8 Termination of Access**

(1) The Second Carrier may terminate an agreement to access

an Eligible Facility of the First Carrier by giving the First

Carrier no less than sixty days prior written notice.

(2) The First Carrier may terminate an agreement to access

an Eligible Facility if it decides to:

(a) decommission that Eligible Facility; or

(b) enter into a sale or leaseback arrangement in respect

of that Eligible Facility.

(3) If:

(a) the Second Carrier ceases to be a Carrier; or

(b) the Second Carrier breaches a material obligation under

this Code and/or the applicable terms and conditions of

access and that breach materially impairs or is likely to

materially impair the ability of the First Carrier to deliver

access to other Second Carriers or provide services to its

customers; and

(i) the First Carrier has given a notice to that effect

to the Second Carrier (a Breach Notice) within ten

Business Days of becoming aware of the breach; and

(ii) the Second Carrier fails to institute remedial action,

which may be specified in the Breach Notice, within

twenty Business Days after receiving the Breach

Notice (Remedy Period); then

the First Carrier may terminate the supply of access to

a particular Eligible Facility by notice given to the Second

Carrier within twenty Business Days of becoming aware of

a cessation or expiry of the Remedy Period specified in the

Breach Notice (as the case may be).

(4) Either a First or Second Carrier (Notifying Party) may

terminate an access agreement on five Business Days notice

to the other Carrier (Other Party) if:

(a) an order is made or an effective resolution is passed

for winding up or dissolution without winding up

(otherwise than for the purposes of reconstruction or

amalgamation) of the Other Party and the order or

resolution remains in effect for a continuous period

of five Business Days; or

(b) a receiver, receiver and manager, official manager,

administrator, provisional liquidator, liquidator, or like

official is appointed over the whole or a substantial part

of the undertaking and property of the Other Party or

the Other Party enters or proposes to enter into any

scheme of arrangement or any compositions for the

benefit of its creditors; or

(c) a holder of an encumbrance takes possession of the

whole or any substantial part of the undertaking and

property of the Other Party or the Other Party enters

or proposes to enter into any scheme of arrangement

or composition for the benefit of its creditors; or

(d) the Other Party is unable or will be unable to pay its

debts as they fall due; or

(e) a *force majeure*, substantially and adversely affecting

the ability of a Notifying or Other Party to perform its

obligations to the Other or Notifying Party respectively,

continues for a period of six months; or

(f) as a result of s. 459F or any other section of the

Corporations Law, the Second Carrier is taken to have

failed to comply with a statutory demand; or

(g) at any time during the term any director of the Other Party does any of the following things under the *Bankruptcy Act 1966* (Cth):

* 1. becomes bankrupt;
  2. signs an authority under section 188;
  3. commits any of the acts of bankruptcy specified in section 40; or
  4. presents a debt agreement or personal insolvency agreement; or

(h) the Other Party defaults, and such default continues for

a period of ten Business Days after written notice has

been given to it by the Notifying Party, in the payment

of any money which is owing by the Other Party on any

account whatsoever to the Notifying Party; or

(i) the Other Party breaches any of the terms of any of its

loan, security or like agreements or any lease or

agreement relating to equipment used in conjunction

with the business of that Other Party related to this

Code, or that Other Party fails to make on the due date,

any payment due in respect of any loan or debt taken

out or owed by that Other Party which loan or debt is

at that time guaranteed or otherwise secured by the

Notifying Party or any of its related bodies corporate

or Controlled Entities; or

(j) a demand is made on the Notifying Party for payment

of money under any instrument, guarantee or indemnity

given by the Notifying Party to secure advances or other

financial accommodation made to the Other Party; or

(k) the Other Party ceases to carry on business for a period

of more than ten consecutive Business Days without the

prior written consent of the Notifying Party; or

(l) anything analogous or having a substantially similar

effect to any of the events specified above occurs in

relation to the Other Party or a related body corporate

or controlled entity of that Other Party; or

(m) the Other Party breaches a term or condition

of a security provided under a security requirement; or

(n) the Eligible Facility is damaged or destroyed or if there

is an interruption to access to the Eligible Facility so as

to render the Eligible Facility or any part of the Eligible

Facility wholly or substantially unfit for the occupation

or use or inaccessible by any means of access; or

(o) any application for a required consent or a permit for

the installation and use of the Eligible Facility as part of

a telecommunication network and telecommunication

service is finally rejected or cancelled, lapses or is

otherwise terminated and no further or replacement

consent or permit can reasonably be obtained; or

(p) the Eligible Facility is rendered unfit for the First and/or

Second Carrier’s use by reason of the emergence

of significant electromagnetic interference; or

(q) the First Carrier determines that the Eligible Facility has

become unsafe or any reason other than a failure to

maintain in accordance with clause 5.1of this Code.

(5) Upon the expiry of the term or earlier termination

of an access agreement, the Second Carrier **must**:

(a) remove its Equipment from the Eligible Facility within

thirty Business Days;

(b) reinstate the Eligible Facility to the same standard, style

and condition as existed prior to the installation of its

Equipment; and

(c) do such other acts, matters and things as the parties may

agree,

and the First Carrier **must** allow the Second Carrier to enter

the land on which the Eligible Facility is located in order

to do so.

(6) If, after the termination or expiry of an access agreement the

Second Carrier has failed to comply with sub-clause 5.8(5),

the First Carrier may, upon giving reasonable notice, carry

out any necessary disconnection works and repossess any

equipment.

(7) All reasonable costs of the disconnection described

in sub-clause 5.8(6) **must** be paid by:

(a) in the case of disconnection due to sub-clause 5.8(1)

or 5.8(3) or 5.8(4)(f) — the Second Carrier; and

(b) in the case of disconnection due to any of sub-clause

5.8(4) (a), (b), (c), (d), (g). (h), (i), (j), (k), (l), (m), or (n)

— the party described therein as the other party; and

(c) in the case of disconnection due to paragraph 5.8(4)(e)

— the party affected by the *force majeure*; and

(d) in the case of disconnection due to the failure of the

First Carrier to maintain the Eligible Facility in

accordance with clause 5.1 of the main Code, the First

Carrier.

(8) In the event that there is a dispute as to reasonable costs of

disconnection, pursuant to sub-clause 5.8(7), Carriers **must**

engage in dispute resolution, as set out in Chapter 2 of the

main Code.

(9) Termination or expiry of an access agreement does not

operate as a waiver of any breach by a Carrier of any of its

provisions and is without prejudice to any rights, liabilities

or obligations of any Carrier which have accrued up to the

date of the termination or expiry, including a right of

indemnity. Carriers **must** negotiate whether the termination

of a Master Access Agreement should cause the termination

of a site-specific facilities access agreement.

(10)Without prejudice to the Carriers’ rights upon termination

or expiry of an access agreement, the First Carrier **must**

refund to the Second Carrier a fair and equitable proportion

of those sums paid under an access agreement by the

Second Carrier which are periodic in nature and have been

paid for an Eligible Facility for a period extending beyond

the date on which an access agreement terminates or

expires, provided there are no invoices outstanding from the

Second Carrier to the First Carrier.

(11)Pursuant to sub-clause 5.8(10), in the event of a dispute

in relation to the calculation or quantum of a fair and

equitable proportion of the sums paid under an access

agreement, Carriers **must** engage in dispute resolution,

as set out in Chapter 2 of the main Code.

(12)The First Carrier **must** include, in any access agreement, an

obligation imposed upon itself that, prior to the withdrawal

by the First Carrier of an access agreement, because it is no

longer providing or is proposing to no longer own or operate

an Eligible Facility, it will provide notice of withdrawal to all

Second Carriers to whom it is supplying access on that

Eligible Facility. The notice period **must** be no less than six

months, provided always that the notice of the decision to

withdraw is provided on an equivalent basis to that on

which the First Carrier provides notice of that decision to

itself. During the notice period, the Second Carrier may

identify and request the supply of an existing substitute

Eligible Facility and the First Carrier **must** consider that

request in good faith.

**5.9 Native Title**

(1) This Code recognises that Eligible Facilities may be subject

to a claim under native title or heritage laws (a Claim).

(2) In the event that a Claim is made in respect of an Eligible

Facility to which access has been granted, then the First

Carrier and the Second Carrier(s) **must**:

(a) reasonably cooperate with each other to resolve the

Claim;

(b) contribute to the costs and expenses of resolving the

Claim, including any payments or liabilities, in

proportion to the space in or on the Eligible Facility

occupied or used by each Carrier; and

(c) negotiate, in good faith, any amendments or variations

(including if required termination) to any licence

agreement as may be necessary or desirable as a result

of the Claim.

**Chapter 6.**

**Glossary and interpretation**

**6.1 Glossary**

**The following words have these meanings unless the contrary**

**intention appears:**

**Act** refers to the *Telecommunications Act 1997* (Cth)

**ACCC** refers to the Australian Competition and Consumer

Commission.

**ACCC Pricing Principles** see a document entitled *Access Pricing*

*Principles - Telecommunications* issued by the ACCC on 22 July

1997.

**Access Window** means that period during which a Carrier’s

Equipment on or in an Eligible Facility is temporarily

decommissioned or not operating.

**ACMA** refers to the Australian Communications and Media Authority.

**Adjoining Site** means the site adjoining or located close

to a replacement Tower or Existing Tower which is to be obtained

and used by the Second Carrier to locate its Equipment Shelter and

associated Equipment.

**Advised Delivery Date** means the date at which the Carrier

undertaking Make Ready Work advises the other Carrier as to the

date on which access is provided in accordance with this Code.

**Breach Notice** is defined in clause 5.8(3)(b) of the main Code.

**Business Day** means a day that is not a Saturday, a Sunday

or a public holiday in the State or Territory in which the Eligible

Facility is located.

**Carriage Service** has the same meaning as in s. 7 of the

*Telecommunications Act 1997* and includes a proposed Carriage

Service.

**Carriage Service Provider** has the same meaning as in s. 87 of the

*Telecommunications Act 1997.*

**Carrier** has the same meaning as in s. 7 of the *Telecommunications*

*Act 1997.*

**Carrier Licence** means a licence granted under s. 56 of the

*Telecommunications Act 1997.*

**Classes of Eligible Facilities** refers to different categories of Eligible

Facilities, such as PMTS Towers, Radcom Towers, Sites of PMTS

Towers, Sites of Radcom Towers and Underground Facilities.

**Code** refers to the ACCC’s ‘Code of Access to Telecommunications

Transmission Towers, Sites of Towers and Underground Facilities’.

**Confidential Information** includes all information, know-how,

ideas, concepts, technology, manufacturing processes, industrial,

marketing and commercial knowledge of a confidential nature

(whether in tangible or intangible form) relating to or developed

in connection with or in support of the business of a Carrier and which relates to Eligible Facilities or is obtained in connection with the supply or acquisition of Eligible Facilities, but does not include information which:

1. is or becomes part of the public domain (other than through any breach of the relevant agreement by the other Carrier or of an obligation of confidence to a third party); or
2. is rightfully received by the other Carrier from a third person (except where that party knew or should have reasonably known that the information was obtained in breach of an obligation of confidentiality or where the third person was under a duty of confidentiality to the relevant Carrier in respect of the relevant information).

**Confidentiality Agreement** means the confidentiality agreement

required by the Access Provider in its Information Package.

**Currently Planned Requirements** means genuine plans for the

future use of an Eligible Facility by a First Carrier where those plans

include commencing:

• ordering and/or installing Equipment on or in an Eligible

Facility; or

• obtaining landlord or government approval, where such

approval is necessary for use of an Eligible Facility

within 36 or 12 months of the date of a Facilities Access

Application if the First Carrier has or has not participated in

a Co-location Consultation Process respectively. The ACCC may

also consider a First Carrier to have Currently Planned

Requirements in other circumstances and may make such

a determination on a case-by-case basis.

**Detailed field study** means a field study as defined by Annexure A or Annexure B of this Code (as appropriate).

**Draft Construction and Work Plan** is a plan prepared by the

Second Carrier for the undertaking of the Make Ready Work

required to provide access on or in an Eligible Facility and includes

a construction timetable and its Work Plan.

**Eligible Facility** is a term intended to collectively

refer to telecommunications transmission towers, sites

of telecommunications transmission towers and eligible

underground facilities specified in clauses 33, 34 and 35

respectively of Part 5 of Schedule 1 to the *Telecommunications Act 1997*.

Clause 31 of Part 5 provides that a ‘telecommunications transmission tower’ means a tower, a pole, a mast or a similar structure used to supply a carriage service by means of radiocommunications. That same clause provides that a ‘site’ means land, a building on land or a structure on land. An ‘eligible underground facility’ means an underground facility that is used, installed ready to be used, or intended to be used, to hold lines.

**Equipment** includes :

(a) antennae, microwave dishes or satellite dishes;

(b) associated transmission Equipment, power plant (including

standby power), and air conditioning plant;

(c) associated feeders, waveguides and waveguide pressuring

Equipment;

(d) related cabling;

(e) prefabricated modules, risers or other structures housing any

of the above;

(f) cable gantries;

(g) lines, joints/splices and such other ancillary equipment as

necessary to the support use of a line which may be housed

in pits or manholes where suitable space is available or as

agreed between the parties; and

(h) such other facilities as may be specified from time to time

and agreed to by the parties pursuant to the

*Telecommunications Act 1997.*

**Equipment Shelter** means a building or other structure constructed

or installed by a Carrier which is to contain Equipment.

**Existing Tower** means a Tower (other than a Shared Tower) or part

thereof owned, leased, licensed or used by the First Carrier in

respect of which the First Carrier has gained all necessary consents

and approvals.

**Existing Tower Site** means a Site (other than a Shared New Site)

or part thereof owned, leased, licensed or used by the First Carrier

in respect of which the First Carrier has gained all necessary

consents and approvals to locate a Tower on it.

**Facilities Access Application** means an application as defined by Annexure A or Annexure B of this Code (as relevant).

**Financial Security Requirements** mean instruments which a First

Carrier may require of a Second Carrier so as to assure itself that

a Second Carrier is able to meet financial obligations incurred as

a result of access being provided to it. Examples of security may

include but are not limited to:

(i) fixed and floating charges;

(ii) personal guarantees from directors;

(iii) bank guarantees;

(iv) letters of comfort;

(v) mortgages; and

(vi) a right of set off.

**First Carrier** means a Carrier which owns or operates or controls

Eligible Facilities to which access may be sought.

**Information package** includes information established and maintained by a First Carrier in relation to the provisions of access to particular Eligible Facilities of classes of Eligible Facilities.

**Lease** means the lease, licence or other contractual right of use

or occupation held by a First Carrier for a Tower.

**Lessor** means the owner of a Tower or the party with the power

or right to grant a right of occupation to a Carrier for the operation

of a Tower.

**Make Ready Work** means the work that is reasonably necessary

to make the Tower, Tower Site or Underground Facility ready for

access by the Second Carrier which may include (but is not

limited to):

(a) structural analysis;

(b) strengthening, modifying or augmenting an Existing Tower

to the extent necessarily and proportionally required

to condition the Tower to bear the wind and weight loading

directly added by the Second Carrier’s Equipment;

(c) constructing, installing or modifying head frames, cable

risers, cable trays and other Tower fittings required to house

the Equipment of the Carriers on the Tower;

(d) where the Tower is an Existing Tower, removing an existing

Tower of the First Carrier and constructing a replacement

Tower for co-location on that replacement Tower of the First

Carrier and the Second Carrier’s Equipment; or

(e) where the Tower is a replacement Tower, constructing

a replacement Tower, including all design, approval and

construction work;

(f) proving ducts, installing subducts and manhole breakouts,

clearing roots or silt and repair work;

(g) rearranging the First Carrier’s existing Equipment;

(h) the provision of temporary facilities to accommodate

existing Equipment;

(i) making alterations to an underground duct;

(j) installing or extending cable trays or iron work to house the

Second Carrier’s lines and/or underground Equipment; and

(k) any other matters specified by the parties from time to time.

**Master Access Agreement** means an agreement as defined by Clause 4.2 of this Code, which covers general or standard terms and conditions by which the Second Carrier will obtain access to the Eligible Facilities of the First Carrier (or a class thereof).

**Meeting** of Carrier representatives includes a meeting

by telephone or video-conference.

**NBN corporation** has the same meaning as in section 5 of the *National Broadband Network Companies Act 2011* (Cth).

**Outage** means that period during which a Carrier’s Equipment at a

Shared Tower Site is temporarily decommissioned or not operating.

**Potential Second Carriers** includes persons who have submitted

a current industry development plan to the relevant Minister as a part of

applying for a Carrier licence.

**PMTS Tower** means a Tower primarily designed for use to supply

a PMTS.

**PMTS** means a public mobile telecommunications service as defined in section 32 of the *Telecommunications Act 1997.*

**Radcom Tower** means any Tower which is not a PMTS Tower.

**Regulations** includes regulations made under clause 36(4) of Part

5 of Schedule 1 of the *Telecommunications Act 1997.*

**Shared Existing Site** means an Existing Site which a First and one

or more Second Carriers have agreed to share. For the purposes of

this Code, an Existing Site becomes a Shared Existing Site from the

date upon which a Facilities Access Application is accepted in

accordance with this Code or such other date as the Carriers which

share a Site may, in respect of that Site, mutually determine.

**Shared New Site** means a Site that is not an Existing Site of

a Carrier which has been identified as a potential Shared Site and,

for the purposes of this Code, a Site becomes a Shared New Site

from the date upon which a Sharing Proposal is accepted in

accordance with this Code or such other date as the Carriers which

share a Site may, in respect of that Site, mutually determine.

**Shared New Underground Facility** means a new Underground

Facility which Carriers have agreed to collectively develop for the

purpose of sharing its use and which becomes a Shared New

Underground Facility Site from the date upon which a Sharing

Proposal is accepted in accordance with this Code or such other

date as the Carriers which share an Underground Facility may,

in respect of that Facility, mutually determine.

**Shared Site** includes a Shared New Site or a Shared Existing Site.

**Sharing Proposal** means a proposal as defined by sub-clause

4.5(4) of this Code

**Site** means land, a building on land or structure on land which is,

can be or is to be used to locate Equipment consistent with the

Telecommunications Act 1997.

**Second Carrier** means a Carrier which has requested, or has been

granted, access to another Carrier’s Eligible Facilities.

**Sub-Lease** means a grant of part of the rights in respect of a Lease

and includes a licence or other contractual right of use

or occupation.

**Suspension Event** means:

(a) the continued supply of access to a particular Eligible

Facility poses a threat to the safety of persons, Equipment

or network security; or

(b) the Second Carrier has failed to pay monies owing, other

than amounts in bona fide dispute under an executed

agreement for access to Eligible Facilities; or

(c) the Second Carrier’s use, either of its Eligible Facility or the

First Carrier’s Eligible Facility is in contravention of any law;

or

(d) the Second Carrier breaches a material obligation under

an access agreement; or

(e) the Second Carrier has failed to provide creditworthiness

information about its financial position when requested

to do so by the First Carrier.

**Telstra** has the same meaning as in the *Telstra Corporation Act 1991*.

**Third Party User** means a user of an Eligible Facility other than

a First or Second Carrier.

**Tower** means a ‘telecommunications transmission tower’

as defined in clause 31 of Part 5 of Schedule 1 of the

*Telecommunications Act 1997.*

**Tower Sub-Lease** means a sub-lease or other right of occupation

granted to the Second Carrier by the First Carrier which permits

that Carrier to install its Equipment on the Tower as permitted

by this Code.

**Underground Facility** means an underground facility that is used,

installed ready to be used, or intended to be used to hold lines.

**Work Plan** means a plan prepared by the Second Carrier detailing

the method and procedures that the Second Carrier will use

in installing its Equipment on or in an Eligible Facility. A Work

Plan would be included in a Second Carrier’s ‘Draft Construction

and Work Plan’ where it proposes to undertake the Make Ready

Work on or in an Eligible Facility.

**6.2 Interpretation**

In the Code, unless the context otherwise requires:

(a) headings are for convenience only and do not affect the

interpretation of the Code;

(b) words importing the singular include the plural and vice

versa;

(c) words importing a gender include any gender;

(d) an expression importing a natural person includes any

company, partnership, trust, joint venture, association,

corporation or other body corporate, and any other

government agency;

(e) a reference to any thing includes a part of that thing;

(f) a reference to a chapter, condition, clause, schedule or part

is a reference to a chapter, condition, clause, schedule or

part of the Code;

(g) a reference to any statute, regulation, proclamation, order

in council, includes all statutes, regulations, proclamations,

orders in council, varying, consolidating, re-enacting,

extending or replacing and a reference to a statute includes

all regulations, proclamations, orders in council, by-laws

and determinations issued under that statute;

(h) a reference to a person includes that person’s executives,

administrators, successors, substitutes (including, without

limitation, persons taking by novation) and permitted

assignees;

(i) period of time which:

(i) dates from a given day or the day of an act or event

is to be calculated exclusive of that day; or

(ii) commences on a given day or the day of an act or event

is to be calculated inclusive of that day;

(j) a reference to a Carriers’ Equipment includes Equipment that

it owns, operates or controls; and

(k) any event which is to occur on or by a stipulated day which

is not a Business Day may occur on the next Business Day.

**ANNEXURE A.**

**TELECOMMUNICATIONS**

**TRANSMISSION TOWERS AND**

**SITES OF TOWERS**

**Part 1.— Preliminary Assessment of Access**

**1.1 Exchange of information**

(1) Where the Second Carrier wishes to explore the sharing

of an Existing Tower and/or Tower Site of the First Carrier,

the Carriers **must** exchange information within a reasonable

period of time for the purpose of assisting the Second Carrier

to make a preliminary assessment as to whether the Tower

and/or Tower Site would be suitable for the Second Carrier

to install Equipment for use in connection with the supply

of a carriage service by means of radiocommunications.

This information may include details of any relevant

certificate relating to technical feasibility in respect of that

Tower and/or Tower Site issued by the ACCC under Part 5 of Schedule 1 to the *Telecommunications Act 1997*.

(2) If requested by the Second Carrier, the exchange of

information may include plans of the Tower and/or Tower

Site of the First Carrier, a price schedule (if any) for the

provision of information, whether there are Currently

Planned Requirements and whether there are applications

from other Carriers to share the Tower and/or Tower Site.

(3) Information provided under this clause is subject to the

confidentiality provisions of clause 2.1 of the main Code

and any obligations the First Carrier owes to a third party

over whose property the Tower and/or Tower Site has to

be accessed.

(4) A First Carrier does not have to comply with sub-clause

1.1(1) if the provision of information would breach

obligations the First Carrier owes to a third party over whose

property the Tower and/or Tower Site has to be accessed.

**1.2 Physical access**

(1) If the Second Carrier seeks to visit a Tower and/or Tower Site

for a purpose related to making a bona fide ‘Facilities Access

Application’ for access to that specific Tower and/or Tower

Site, it **must** notify the First Carrier of its intention to conduct

a physical inspection of that Tower and/or Tower Site and

complete a Physical Inspection Notification form provided

by the First Carrier as part of its Information Package. One

notification may be used for multiple visits to the Tower

and/or Tower Site over a period of one month.

Note: see clause 2.1 of this Annexure for a definition of a Facilities

Access Application.

(2) The Physical Inspection Notification **must** contain the

following information:

(i) reasons for physical inspection; and

(ii) details of the kind and location of the Tower and/or

Tower Site to which physical inspection is sought; and

(iii) the date(s) and time(s) at which the Second Carrier

wishes to visit the Tower and/or Tower Site; and

(iv) other matters, as agreed between the parties.

(3) Subject to sub-clause 1.2(4) and obligations imposed by the

Lessor of the relevant Tower and/or Tower Site or by a third

party over whose property the Tower and/or Tower Site has

to be accessed, the Second Carrier’s personnel **must** be

permitted physical access to the Tower and/or Tower Site:

(i) in an orderly manner and on a non-discriminatory basis;

and

(ii) as soon as reasonably practicable and within three

Business Days of giving notification of a physical

inspection.

(4) Where there is a significant risk to the health and safety

of a Carrier’s employees, agents or contractors or to integrity

of the First Carrier’s network or facility from unaccompanied

access by a Second Carrier’s employees, agents or

contractors (the representatives), the First Carrier may

require, at the Second Carrier’s expense, that the Second

Carrier’s representatives be accompanied by an employee

of the First Carrier and, prior to granting a Second Carrier’s

representatives access to the Tower and/or Tower Site, the

Second Carrier’s representatives undergo an induction course

which is relevant to the physical inspection. An induction

course may include accompanied visits to the Tower and/or

Tower Site. In determining whether there is a significant risk

to the integrity of the network or facility from

unaccompanied physical access, regard should be had to the

importance of the facility to the First Carrier’s network and

the qualifications of the Second Carrier’s representatives.

(5) The Second Carrier’s representatives are not required to

be accompanied by an employee of the First Carrier nor

undergo an induction course where there is no significant

risk to the integrity of the First Carrier’s network or facility

from unaccompanied access. Nonetheless, the First Carrier

may choose to accompany the Second Carrier’s

representatives provided that the Second Carrier may gain

physical access in accordance with the notification times

governed by sub-clause 1.2(3) and the First Carrier meets

its own cost of attending.

(6) In the event that there is disagreement over whether there

exists a significant risk to the health and safety of a Carrier’s

employees, agents or contractors or to the integrity of the

First Carrier’s network or facility then both Carriers **must**

engage in dispute resolution, as set out in Chapter 2 of the

main Code. In the period prior to the disagreement being

resolved, the First Carrier may require accompanied

physical access.

(7) When accessing the Tower and/or Tower Site, the Second

Carrier’s representatives **must** comply with all reasonable

directions from the First Carrier, including directions relating

to its engineering practices.

(8) The Second Carrier **must** retain a log recording the date,

time and duration of visits by its personnel to the Tower

and/or Tower Site for which the other Carrier is the First

Carrier, and the First Carrier will be entitled to inspect this

log on reasonable notice.

**Part 2.— Facilities Access Application**

**2.1 Lodgement of Facilities Access Application**

(1) If the Second Carrier wishes to share an existing Tower

and/or Tower Site of the First Carrier, it **must** submit to that

First Carrier a Facilities Access Application for its review and

acceptance.

(2) Subject to the provision of appropriate confidentiality

assurances by the First Carrier in respect of the

non-disclosure of information, and any existing Master

Access Agreement regarding security requirements,

a Facilities Access Application **must** include creditworthiness

information that includes, but is not limited to:

(a) a letter, signed by the company secretary or duly

authorised officer of the Second Carrier, stating that the

Second Carrier is not insolvent and not under any

external administration (as defined in the Corporations

Law) or under similar form of administration under any

laws applicable to it in any jurisdiction;

(b) the Second Carrier’s credit rating, if any has been

assigned to it;

(c) if requested, a copy of the Second Carrier’s most recent

published audited balance sheet and published audited

profit and loss statement together with any notes that

form part of those accounts; and

(d) other relevant financial data as agreed between the First

Carrier and Second Carrier.

Note: refer to clause 4.2 of the main Code for provisions relating to the

nature and negotiation of a Master Access Agreement.

(3) The Second Carrier **must** warrant the accuracy of any

creditworthiness information provided to the First Carrier.

(4) Pursuant to sub-clause 2.1(3) of Annexure A, in the event

that Carriers are unable to agree on the application of the

warrant specified in that sub-clause, Carriers **must** engage in

dispute resolution, as set out in Chapter 2 of the main Code.

(5) The Facilities Access Application may include information

to be agreed from time to time between the parties, but it

**must** include at least the following information:

(i) specifications for Make Ready Work;

(ii) time required for access to be delivered;

(iii) a description of the Equipment which the Second

Carrier wishes to install on the Tower or at the Site,

including all technical and design specifications,

dimensions, wind and load factors and

radiocommunications characteristics, any relevant

structural analyses and electromagnetic energy tests

and, where relevant, the make number of the

Equipment;

(iv) a Work Plan which sets out the method and procedures

that the Second Carrier will use in installing its

Equipment on the Tower or at the Site;

(v) alternative locations for the Equipment, in order

of priority;

(vi) the radio frequency and electromagnetic characteristics

of the Equipment;

(vii) any Equipment to be placed at the base of the Tower;

(viii)characteristics of the Equipment and conditions

or procedures applicable to the installation, operation

or maintenance of that Equipment which do not

conform with or require special consideration under the

First Carrier’s engineering practices;

(ix) any cabling and waveguides to run between the

Equipment on the Tower and the Equipment on the

ground;

(x) the general timeframe (measured from the date of any

Order made by the Second Carrier in accordance with

clause 3 of Schedule A1) within which the Second

Carrier wishes to be able to commence installation

of the Equipment;

(xi) the expected term of access required by the Second

Carrier to the Tower and/or Tower Site; and

(xii)any relevant changes or updates to previously supplied

information.

(6) A Facilities Access Application for access to a Tower **must**

include the Second Carrier’s view as to whether, on the

information available to it, the existing Tower can be used

or whether a replacement Tower **must** be constructed, and

the basic design of any replacement Tower in addition to the

information specified in clause 2.1(4).

(7) A Facilities Access Application for access to a Tower Site

**must** include the following information additional to the

information specified in sub-clause 2.1(4):

(i) details of the kind and location of the Tower Site

to which access is sought;

(ii) if the Second Carrier intends to use an existing Tower

on the Tower Site, the Second Carrier’s view as to

whether, on the information available to it, the existing

tower can be modified and the basic design of the

modified tower; and

(iii) if the Second Carrier intends to install a new Tower, the

basic design of the new Tower.

(8) The First Carrier **must** provide technical information in

relation to the Tower or Tower Site, if requested, to enable

the Second Carrier to complete its Facilities Access

Application.

(9) To the extent necessary to assist the First Carrier to assess

a Facilities Access Application, the Second Carrier **must**

include technical information in its Facilities Access

Application, such as structural analyses and electromagnetic

energy tests, relevant to how it proposes to install its

proposed Equipment under its Work Plan and, if the

Facilities Access Application proposes that the Second

Carrier undertake Make Ready Work, how it proposes

to undertake that Make Ready Work.

(10)Further to sub-clause 2.1(9) of Annexure A, the Second

Carrier **must** warrant the accuracy of all technical

information included in support of its Facilities Access

Application and provide details to the First Carrier of the

qualifications of the persons responsible for providing that

information.

(11)Pursuant to sub-clause 2.1(10) of Annexure A, in the event

that Carriers are unable to agree on the application of the

warrant specified in sub-clause 2.1(9) of Annexure A,

Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code.

**2.2 Assessment of Facilities Access Application**

(1) The First Carrier **must** notify the Second Carrier, within the

period specified in sub-clause 2.2(2), whether:

(i) it accepts the application; or

(ii) it will reject the application.

(2) If the Eligible Facility is a PMTS Tower or PMTS Tower Site,

the period specified is twenty Business Days or such other

time as is agreed. For Radcom Towers or Radcom Tower

Sites, the period specified is thirty Business Days or such

other time as is agreed.

**2.3 Proposal to reject a Facilities Access**

**Application**

(1) If the First Carrier proposes to reject the access application

of the Second Carrier on technical grounds, it **must** provide

the Second Carrier with a written explanation of its concerns

and meet within ten Business Days of receiving the

application to discuss those concerns. Carriers **must** make

reasonable endeavours to develop a strategy for managing

access to the Eligible Facility which addresses the reasonable

concerns of each Carrier. In the case of an application for

access to a Tower, such a strategy may include the

construction of a replacement Tower. In the case of

an application for access to a Tower Site, such a strategy

may include replacing the Tower situated on that Tower Site.

(2) After the initial meeting referred to in sub-clause 2.3(1), the

First Carrier **must**, if requested by the Second Carrier, within

five Business Days of the Second Carrier’s request, submit

a request to the ACCC for the issue of a certificate under

clause 33(3) and/or clause 34(3) of Part 5 of Schedule 1

of the Act for proposed rejections for access to Towers

and/or Tower Sites respectively. If the Second Carrier does

not make such a request within thirty Business Days of the

initial meeting, the First Carrier may deem the Second

Carrier’s application to have been withdrawn. At the same

time as the First Carrier submits a request to the ACCC, it shall

notify the Second Carrier of that request.

(3) In the event that, following a request from the First Carrier

and its assessment of that request, the ACCC does not issue

a certificate stating that access would not be technically

feasible, then, for the purposes of this Code, the First Carrier

will be deemed to have accepted the Facilities Access

Application.

(4) Where an application has been rejected by the First Carrier

for technical reasons, the Second Carrier is entitled to

resubmit an amended application at any time, and the

proposal **must** be reconsidered in accordance with clause

2.2. If the amended application is re-submitted within one

month of the previous application then the First Carrier **must**

provide the notification required within ten Business Days

of receiving an amended application.

(5) If the First Carrier proposes to reject the application of the

Second Carrier on grounds other than technical grounds,

it **must** provide the Second Carrier with a written

explanation of its concerns and meet with the Second

Carrier within ten Business Days of receiving the application

to discuss those concerns. Carriers **must** make reasonable

endeavours to develop a strategy for managing access to the

Eligible Facility which addresses the reasonable concerns

of each Carrier.

**2.4 Acceptance of a Facilities Access Application**

(1) If the First Carrier accepts an application, it **must** continue,

where relevant, to hold the Lease for the Tower and/or Tower

Site and will be the sole lessee under the Lease and the

Second Carrier **must not** object to the continuation of any

existing Tower Sub-Lease and/or Tower Site Sub-Lease

already granted in respect of the Tower and/or Tower Site.

(2) The First Carrier **must** grant to the Second Carrier a Tower

Sub-Lease and/or Tower Site Sub-Lease of an agreed part

of the Tower and/or Tower Site to enable the Second Carrier

to install, use and maintain its Equipment on the Tower

and/or Tower Site.

(3) Unless the Second Carrier agrees otherwise, the term of the

Tower Sub-lease and/or Tower Site Sub-Lease **must** be

substantially coextensive with the remaining term of the

Lease of the existing Tower or the lease for the Adjoining

Site, whichever is shorter.

(4) Where the First Carrier owns the existing Tower and/or Tower

Site, the First and Second Carriers **must** agree on the term

of the Tower Lease and/or Tower Site Lease.

(5) The following requirements are specific to the acceptance

of an application for access to Towers only:

(i) The Second Carrier **must**, unless otherwise agreed,

obtain rights of occupation of an Adjoining Site

on which it will locate its Equipment Shelter and

its Equipment (other than the Equipment which is to

be located on the Tower and the cables connecting the

Adjoining Site and the Tower).

(ii) The Second Carrier **must** be responsible for obtaining its

own rights to occupy the Adjoining Site.

(iii) Any negotiations as to the Adjoining Site with the

Lessor will be conducted by the Second Carrier, in

consultation with the First Carrier and any other Second

Carrier which holds a lease for the Tower, and, so far as

is reasonable, having regard to the powers granted to

a Carrier under the Act, the Second Carrier **must** act

in a manner which does not jeopardise the Lease for

the existing Tower or any lease held by another Second

Carrier of that Tower.

(6) In relation to an acceptance of an application for access to

Tower Sites only, the First Carrier **must** continue to own any

Existing Tower on an Existing Tower Site which is to be a

Shared Site.

(7) While it is intended that the Tower Sub-Lease and/or Tower

Site Sub-Lease will be executed before any Make Ready

Work commences, a Second Carrier will be deemed to be

bound by the terms and obligations of the Tower Sub-Lease

and/or Tower Site Sub-Lease in respect of any access by

it whether or not, at the time of such access, a formal Tower

Sub-Lease and/or Tower Site Sub-Lease has been

entered into.

(8) If:

(a) Make Ready Work commences prior to the execution

of the Adjoining Site lease by the Second Carrier; and

(b) the Existing Site does not become a Shared Existing Site

because the Adjoining Site is not subsequently secured

for occupation by the Second Carrier and the Second

Carrier does not find another Adjoining Site within

a reasonable time:

the Tower Sub-Lease **must** be terminated and the Second Carrier

**must** reimburse the First Carrier for any reasonable costs

or expenses (whether in respect of the Tower Sub-Lease

or otherwise) which it has incurred prior to such termination.

(9) Pursuant to sub-clause 2.4(8) of Annexure A, in the event

that Carriers are in dispute over the magnitude of reasonable

costs or expenses, then Carriers **must** engage in dispute

resolution, as set out in Chapter 2 of the main Code.

**Part 3.— Termination of Tower Access**

**3.1 Standard term of access**

Unless otherwise agreed between the parties, a standard term

of a particular Tower and/or Tower Site **must** be the lesser of:

(a) fifteen years; or

(b) the term of the First Carrier’s rights of tenure in respect

of that Tower and/or Tower Site; or

(c) in the case of Towers, the period equal to the remaining

economic life of the Tower.

**3.2 Termination by First Carrier**

(1) In regard to a PMTS Tower or PMTS Tower Site, if the First

Carrier:

• intends to decommission the Tower and/or Tower Site

and terminate the provision of access to that Tower

and/or Tower Site; and

• the Second Carrier wishes to continue to use that Tower

and/or Tower Site; then the First Carrier **must**

(a) release the Second Carrier from the Tower Sub-Lease

and/or Tower Site Sub-Lease and upon vacation of

the Tower and/or Tower Site by that First Carrier, any

obligations under this Code in respect of that Tower

and/or Tower Site; and

(b) where there is more than one Second Carrier sharing

a Tower and/or Tower Site, permit the Second Carrier

that was the first Carrier to share the Tower and/or

Tower Site (and if shared initially by more than one

Second Carrier, by agreement between the Second

Carriers) to take an assignment of or novate the

Lease from the First Carrier;

(c) indemnify the Second Carrier against any claims

by the Lessor or any other person in respect of the

First Carrier’s use of the Tower and/or Tower Site; and

(d) make reasonable endeavours to incorporate clause

3.2 of Annexure A into any negotiations with the

Lessor regarding the execution or the re-negotiation

of the Lease.

(2) In regard to a PMTS Tower owned or operated by a First

Carrier, upon vacation of the Tower and/or Tower Site by the

First Carrier, ownership of the Tower **must** be assigned to the

Second Carrier that takes an assignment of or novation of the

Lease, whereupon that Second Carrier will become the First

Carrier. The Second Carrier which takes the assignment or

novation of the lease **must** indemnify the First Carrier against

any claims, damages, expenses or liabilities in respect of the

Tower and/or Tower Site arising after the date of the

assignment or novation.

**3.3 Termination by Second Carrier**

If the Second Carrier decides to cease using a Tower and/or

Shared Tower Site and the First Carrier wishes to continue

using the Tower and/or Tower Site, the Second Carrier **must**

indemnify the First Carrier against any claims by the Lessor

or any other person in respect of the Second Carrier’s use of

the Tower and/or Tower Site, upon the termination of the

Tower Sub-Lease and/or the Tower Site Sub-Lease.

**SCHEDULE A1. ACCESS PROCEDURE —**

**FIRST CARRIER PERFORMS**

**MAKE READY WORK**

**1. Conduct of a Detailed Field Study**

(1) Within twenty Business Days of the First Carrier accepting

the Second Carrier’s Facilities Access Application, the

Second Carrier may make a written request for a Detailed

Field Study to be completed by the First Carrier. That Study

**must** encompass a confirmation (or variation) of the results

of a First Carrier’s preliminary assessment of access to the

Tower and/or Tower Site and the development of a Make

Ready Work proposal by the First Carrier.

(2) The Second Carrier’s written request for a Detailed Field

Study **must** contain at least the following:

(i) a formal request for a Detailed Field Study;

(ii) a reference to a preceding preliminary assessment

of access;

(iii) any relevant changes or updates to previously supplied

information; and

(iv) a proposed timeframe for meetings with the First Carrier,

to be held during the period in which the First Carrier

must complete the Detailed Field Study in order to

discuss and endeavour to agree on the matters listed

at sub-clause 1(3) of Schedule A1.

(3) Carriers **must** discuss the request for a Detailed Field Study

and endeavour to agree on:

(i) which parts of the Detailed Field Study, Make Ready

Work and rigging work for installation of Equipment on

the First Carrier’s Tower or a Tower on the First Carrier’s

Site are to be carried out by each of the Parties;

(ii) which Party will undertake any necessary radio

frequency and/or radiation assessment;

(iii) what information is to be exchanged in order for each

Party to undertake tasks agreed in sub-clause 1(3)(i) and

1(3)(ii) of Schedule A1;

(iv) timing targets for the exchange of information under

sub-clause 1(3)(iii) of Schedule A1 and completion

of the Detailed Field Study;

(v) matters relating to the timing of any necessary

transmitter power reductions or switch-offs during Make

Ready Work and/or the installation of Equipment;

(vi) the Work Plan setting out the method and procedures

that the Second Carrier will use in installing its

Equipment on the Tower and/or Tower Site;

(vii) the time required to deliver access;

(viii)charges for the undertaking of the Detailed Field Study;

and

(ix) any other outstanding issues in connection with the

Detailed Field Study.

(4) If a Detailed Field Study request is made to the First

Carrier then, within the period specified in sub-clause 1(5)

of schedule A1, the First Carrier **must** advise the Second

Carrier on:

(a) confirmation of the results of any preliminary

assessment of access or details and explanation of any

variation

to the results of a preliminary assessment of access;

(b) details of the Make Ready Work required (including

who will be responsible for undertaking each part) and

the time required to perform the Make Ready Work;

(c) the cost of Make Ready Work;

(d) the basis upon which access charges will be levied;

(e) the time required to deliver access, after being Ordered

by the Second Carrier in accordance with clause 3

of Schedule A1;

(f) the Site’s security classification for physical access

purposes; and

(g) other matters as agreed between the parties.

(5) If the Eligible Facility is a PMTS Tower or PMTS Tower Site,

the time specified is as soon as is reasonably practicable

and at least within twenty Business Days of the request for

a Detailed Field Study. For other Towers or Tower Sites, the

time specified is as soon as is reasonably practicable and

at least within thirty Business Days of the request for

a Detailed Field Study.

(6) If the First Carrier discovers a material error in a valid advice

before the First Carrier has accepted an Order by the Second

Carrier in accordance with clause 3 of Schedule A1, it **must**

advise the Second Carrier as soon as practicable and correct

the advice. Where the corrected advice curtails, reduces or

delays access to the Tower and/or Tower Site, the First Carrier

**must** consult with the Second Carrier on alternatives which

would satisfy the Second Carrier’s requirements, either on

an interim or continuing basis.

**2. Time extension for the conduct of a Detailed**

**Field Study**

(1) If the First Carrier considers that it is unable to complete

a Detailed Field Study in regard to access to the Eligible

Facility within the period specified in sub-clause 1(5) of

Schedule A1, and requires further time to consider the

access application, the parties **must** make reasonable

endeavours, acting in good faith, to discuss and agree on

a period for a time extension in which to complete that

study.

(2) If agreement on a time extension cannot be reached, then

Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code

(3) In the event that Carriers agree to the appointment

of an independent expert to determine whether an extension

should be given, or the ACCC is required to arbitrate on the

matter, then that expert or the ACCC **must** consider the

following factors to the extent that those factors are relevant:

• the complexity of the request for access;

• the complexity or remoteness of the Eligible Facility

to which access has been sought;

• the number of requests, both internal and external,

which the First Carrier has received;

• whether Detailed Field Studies have been previously

undertaken in relation to the Eligible Facility;

• weather conditions in the area where the Eligible

Facility is located;

• the time taken for the Second Carrier to provide

additional information; and

• the time taken to evaluate any additional information

provided by the Second Carrier.

(4) Any time extension granted by an independent expert or the

ACCC **must** take effect immediately after the expert or the

ACCC notifies the First and Second Carrier of its decision.

If the expert or ACCC refuses to grant an extension, then the

First Carrier **must** complete the Detailed Field Study within

the period specified in sub-clause 1(5) of Schedule A1

or some other period determined by the expert or ACCC.

(5) The First Carrier **must** continue to carry out the Detailed

Field Study, pending the decision of an independent expert

or the ACCC and, where appropriate, it **must** inform that

expert of the progress of performing the Detailed Field Study.

**3. Order for access by Second Carrier**

(1) If the Second Carrier wishes to make an Order for access

to the Tower and/or Tower Site, it **must** do so within thirty

Business Days of being advised of the results of the relevant

Detailed Field Study.

(2) An Order **must** be consistent with the Equipment, plant,

work, costs and charge details specified in the Detailed Field

Study. If the First Carrier determines that an Order, in whole

or any part thereof, is inconsistent with the relevant Detailed

Field Study, it **must** consult with the Second Carrier with

a view to overcoming any inconsistencies within five

Business Days.

(3) The Second Carrier’s Order **must** specify in writing:

(a) the term of access requested;

(b) any reasonable written instructions applicable to the

installation of Equipment pursuant to Schedule 1 of the

Act, which **must** be no more stringent than those

applying to the First Carrier;

(c) a description of the Equipment to be installed by the

Second Carrier and/or a description of the Tower Site;

and

(d) the required delivery date and physical arrangements

for access to the Tower Site and/or Equipment to be

installed by the Second Carrier referred to in sub-clause

3(3)(c) of Schedule A1.

(4) If it is necessary to obtain:

(a) permits, approvals, or licences required from any

governmental, regulatory or public authority, agency

or body; and/or

(b) any consent of any owner, landlord, licensor

or mortgagee (including any agreement, determination

or consent required under any Aboriginal, heritage,

or native title rules),

in relation to the installation, repair, testing, operation,

maintenance, or removal of Equipment, then the Second

Carrier **must** make reasonable endeavours to obtain the same,

it should bear the cost of obtaining such permission,

approvals, or licences and it **must** provide a copy of all

permits, authorisations, consents and other approvals to the

First Carrier. If the law or government regulations require that

the First Carrier obtain such permission, approvals or

authorisations, then it **must** make reasonable endeavours to

do so but at the Second Carrier’s expense. If any such permit,

approval, licence, consent, agreement or determination

cannot be obtained, then the Second Carrier **must not** install

its Equipment.

**4. Response to Order for access**

(1) Within ten Business Days of a receipt of an Order, the First

Carrier **must** give written acknowledgment of the receipt

of that Order and provide a Response.

(2) A Response to an Order **must** specify, in writing:

(i) details of Make Ready Work;

(ii) the applicable access charge;

(iii) the description of the Tower and/or Tower Site to which

access is sought and the Equipment to be installed

by the Second Carrier;

(iv) the date upon which access will be provided (the

Advised Delivery Date); and

(v) any reasonable instructions applicable to the Equipment

to be installed by the Second Carrier, which **must** be

no more stringent than those applying to the First

Carrier.

(3) Subject to sub-clause 4(4) of Schedule A1, the First Carrier

**must** deliver access to a Tower and/or Tower Site in respect

of which an application has been accepted on the Advised

Delivery Date or as otherwise agreed.

(4) The First Carrier is not obliged to deliver access on the

Advised Delivery Date if Make Ready Work cannot be

reasonably completed, due to unforeseen circumstances

or circumstances beyond the First Carrier’s control before

that date, and notice has been given to the Second Carrier,

in which case access will be delivered on an agreed date,

which **must** be as soon as reasonably practicable after the

Advised Delivery Date.

(5) If access to a Tower has been granted and, notwithstanding

the completion of Make Ready Work, the Second Carrier

is unable to install its Equipment, the Second Carrier **must**

consult the First Carrier’s Proper Officer with a view to

resolving any issues which may be the responsibility of

the First Carrier under the Code. The First Carrier **must**

complete any work for which it is responsible under the

Code, as reasonably practicable, following such

consultation.

**5. Delivery of Access**

(1) A First Carrier **must** notify the Second Carrier when access

can be provided (Delivery of Access) by a facsimile advice,

at the completion of Make Ready Work done by the First

Carrier.

(2) Prior to the Delivery of Access, the First Carrier **must**

perform all Make Ready Work which it has agreed to

perform, and perform that work as soon as reasonably

practicable.

**6. Variation of Make Ready Work**

(1) If, after the commencement of Make Ready Work, the

First Carrier determines that the actual cost of carrying out

the Make Ready Work is likely to exceed, by more than

a certain proportion agreed between the parties, the costs

upon which the access charge specified in the First Carrier’s

Response was based, because of unforeseen circumstances

or circumstances beyond its control:

(i) the First Carrier **must** immediately suspend all Make

Ready Work and advise the Second Carrier accordingly;

and

(ii) as soon as practicable, the First Carrier **must** provide

a Work Variation Report to the Second Carrier setting

out the nature and extent of additional Make Ready

Work, revised Make Ready Work costs and any revised

Advised Delivery Date; and

(iii) upon receipt of a Work Variation Report, the Second

Carrier **must** either request the First Carrier to carry out

the Make Ready Work at the revised Make Ready Work

costs (and by the revised Advised Delivery Date) or

inform the First Carrier that it does not wish to proceed

with the Make Ready Work. In regard to the latter, the

Second Carrier **must** pay Make Ready Work costs to the

extent then incurred by the First Carrier. In the event

that there is a dispute over the extent of such costs,

Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code.

(2) The First Carrier **must not** incur any penalty or liability to the

Second Carrier by reason of any suspension of Make Ready

Work pursuant to this clause and the Advised Delivery Date

will, to the extent required, be adjusted to take into account

the additions to, or variations in, Make Ready Work.

**7. Cancellation and variation of**

**accepted Orders**

If the Second Carrier cancels or varies its Order between the

date of acceptance and the Advised Delivery Date, the First

Carrier **must** make reasonable endeavours to mitigate any loss

by seeking to re-use Equipment or space provided for on the

Tower and/or Tower Site. The Second Carrier **must** pay the

amount of any loss suffered by the First Carrier, to the extent

that it has not been mitigated. In the event that there is a

dispute over the extent of such a loss, Carriers **must** engage in

dispute resolution, as set out in Chapter 2 of the main Code.

In this clause, loss means

(a) the costs which have been necessarily incurred by the

First Carrier on the basis of the Order and which will

not be otherwise reimbursed following the cancellation

of the Order; and

(b) the costs of capital relating to the holding of Equipment

or space on the Tower and/or Tower Site until use,

disposal or reuse, and any costs necessarily incurred

in arranging for such use, disposal or reuse.

**8. Installation of Equipment by Second Carrier**

(1) The Second Carrier **must** install its Equipment in accordance

with the Work Plan included in its Facilities Access

Application and within three months of the completion

of Make Ready Work.

(2) In the event that there is a dispute over whether a Second

Carrier has complied with sub-clause 8(2) of Schedule A1,

Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code.

**9. Completion inspection**

(1) Unless Carriers otherwise agree, upon completion of installation work by the Second Carrier, there must be a joint on-site inspection by the First Carrier and Second Carrier to ensure that Make Ready Work and installation work have been satisfactorily completed and to agree whether facilities access and installed Equipment are in accordance with the details of the approved Facilities Access Application.

(2)  Unless Carriers otherwise agree, within 20 Business Days of completion of installation work by the Second Carrier, the Second Carrier must provide written notification to the First Carrier that the installation work is complete.

**SCHEDULE A2. ACCESS PROCEDURE —**

**SECOND CARRIER PERFORMS**

**MAKE READY WORK**

**Part 1.— Access to Existing Tower**

**1.1 Construction and Work Plan**

(1) Within fifteen Business Days of notifying the Second Carrier

that it agrees to share a Tower, the First Carrier **must**, subject

to clause 2.1 of the main Code, provide the Second Carrier

with any information reasonably requested by the Second

Carrier for the purposes of preparing the Draft Construction

and Work Plan referred to in sub-clause 1.1(2) of Schedule

A2, including provision of plans and surveys for any Tower,

Tower Site and/or Equipment located on it, provided that

nothing in this clause obliges a First Carrier to provide

information if the provision of that information would result

in the First Carrier breaching obligations it owes to third

parties.

(2) After being provided with the information and material

referred to in sub-clause 1.1(1) of Schedule A2, the Second

Carrier **must**, within 20 Business Days, submit to the First

Carrier a Draft Construction and Work Plan comprising draft

plans and a construction timetable for Make Ready Work

and the Second Carrier’s Work Plan.

(3) The Draft Construction and Work Plan **must** include

a structural and electro-magnetic radiation analysis and

follow the carrying out of physical inspections.

(4) The Draft Construction and Work Plan is subject

to acceptance by the First Carrier, which is not to

be unreasonably withheld.

(5) The First Carrier **must** notify the Second Carrier, in writing,

within:

(a) fifteen Business Days in the case of a PMTS tower; or

(b) twenty five Business Days in all other cases,

of the receipt of the Draft Construction and Work Plan, if it

rejects that Draft Construction and Work Plan or if it agrees to

proceed on the basis of that Draft Construction and Work Plan

to develop a Final Construction and Work Plan.

(6) As part of the formulation of a Final Construction and Work

Plan, the parties **must** agree, subject to sub-clause 1.1(7) of

Schedule A2, on assigned places on the Tower and/or Tower

Site for each Carrier to locate its own Equipment and a

timetable for the installation of Equipment.

(7) The First Carrier has the right to put its Equipment at the top

of the Tower and anywhere not reserved in the Final

Construction and Work Plan to a Second Carrier.

(8) Before deciding to reject the Draft Construction and Work

Plan, the First Carrier **must**, within ten Business Days of

receipt of the Draft Construction and Work Plan, identify its

concerns so as to permit the Second Carrier to revise the

Draft Construction and Work Plan and resubmit it in

accordance with sub-clause 1.1(2) of Schedule A2.

(9) The First Carrier **must** identify reasons for rejecting the Draft

Construction and Work Plan and may reject the Draft

Construction and Work Plan only if:

• it is inconsistent with the proposal or plans provided

as part of the Facilities Access Application; or

• the plan is not prepared in accordance with standard

industry practices and/or standards, or, if the First

Carrier has higher standards or practices which are

reasonable, in accordance with the First Carrier’s

standards or practices; or

• it is likely to cause substantial operational difficulties; or

• it was not prepared by a suitably qualified and

experienced engineer.

In the event that agreement cannot be reached between the

First and Second Carrier on the Draft Construction and Work

Plan, the Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code.

**1.2 Permits and approvals**

(1) If it is necessary to obtain:

(a) any permits, approvals or licences from any

governmental, regulatory or public authority, agency

or both; and/or

(b) any consent of any owner, landlord, licensor or

mortgagee (including any agreement, determination

or consent required under any Aboriginal, heritage

or native title laws);

in relation to any Make Ready Work or the Second Carrier’s

Work Plan, the Second Carrier **must** make reasonable

endeavours to obtain the same, and it **must** bear the cost of

obtaining such permission, approvals, licences, consent,

agreement or determination and it **must** provide a copy of all

permits, authorisations, consents and other approvals to the

First Carrier. If the law or government regulations require that

the First Carrier obtain such permission, approvals or

authorisations, then it **must** make reasonable endeavours to

do so but at the Second Carrier’s expense. If any such permit,

approval, licence, consent, agreement or determination

cannot be obtained then the Second Carrier **must not** install

its Equipment.

(2) The Second Carrier **must** begin obtaining any permits,

approvals, licences or consents referred to in sub-clause

1.2(1) of Schedule A2 and commence ordering and installing

its equipment as soon as reasonably practicable.

(3) A Carrier **must** provide such cooperation which the other

Carrier reasonably requires for obtaining any permission,

approvals or licences necessary for occupation of the Tower

as a Shared Tower and/or occupation of the Tower Site as

a Shared Tower Site.

**1.3 Conduct of Make Ready Work**

(1) The Second Carrier **must** bear all Make Ready Work costs

and all reasonable legal and other costs incurred by the First

Carrier and any existing Second Carrier using a Tower.

(2) Subject to sub-clause 1.3(3) of Schedule A2, the Second

Carrier **must** carry out Make Ready Work in accordance with

the agreed Construction and Work Plan and provide a copy

of diagrams showing any modifications made to the Eligible

Facility and the location of the Second Carrier’s installed

Equipment.

(3) In carrying out the Make Ready Work, the Second Carrier

**must** take all reasonable steps to ensure that all such work

is carried out, so far as is practicable, within the construction

timetable included in the Final Construction and Work

Plan and **must** notify the First Carrier of any delays which

it anticipates, as soon as practicable after becoming aware

that such delays will occur.

(4) If, after the commencement of Make Ready Work, the

Second Carrier determines that it must depart from the Final

Construction and Work Plan, then it may do so, providing

it has secured the agreement of the First Carrier that such

a departure would not have a material impact on the First

Carrier’s use of the Tower and/or Tower Site.

(5) As soon as reasonably practicable after the completion

of Make Ready Work, the Second Carrier **must** install its

Equipment in accordance with the Final Construction and

Work Plan that has been accepted by the First Carrier. Each

Carrier will be responsible for the installation of its own

Equipment on any existing Tower.

(6) In the event that a First Carrier does not consider that

a Second Carrier has met its obligations under sub-clause

1.3(1)-(5) of Schedule A2, then Carriers **must** engage in

dispute resolution, as set out in Chapter 2 of the main Code.

(7) Physical access to undertake Make Ready Work and install

Equipment **must** be in accordance with the procedures

set out in clause 1.2 of Annexure A. In addition, a First

Carrier may choose to accompany the Second Carrier’s

representatives in undertaking Make Ready Work or the

installation of the Second Carrier’s Equipment provided

that the Second Carrier may gain physical access in

accordance with the notification times governed by clause

1.2 of Annexure A and that the First Carrier meets its own

cost of attending.

**1.4 Completion inspection**

(1) Unless otherwise agreed, upon completion of installation work by the Second Carrier, there must be a joint on-site inspection by the First Carrier and Second Carrier to ensure that Make Ready Work and installation work have been satisfactorily completed and to agree whether facilities access and installed Equipment are in accordance with the details of the approved Facilities Access Application. The scope of the completion inspection must be agreed between the Carriers.

(2)  Unless Carriers otherwise agree, within 20 Business Days of completion of installation work by the Second Carrier, the Second Carrier must provide written notification to the First Carrier that the installation work is complete.

**Part 2.— Access to a New or Replacement**

**PMTS Tower**

**2.1 Property rights**

Where the Second Carrier is to construct a replacement Tower:

(a) the replacement Tower will be the property of the First

Carrier; and

(b) the Second Carrier’s Equipment will remain the property

of the Second Carrier.

**2.2 Construction and Work Plan**

(1) Unless the parties otherwise agree, within ten Business Days

of receiving advice that access involving the construction

of a replacement PMTS Tower has been accepted, the

Second Carrier **must** submit to the First Carrier a list of

requirements (Requirements List) and other information

relating to the Equipment it proposes to install on the

replacement Tower, including the following:

(a) all relevant technical and design specifications,

dimensions, load factors and radio communications

characteristics of the Second Carrier’s Equipment; and

(b) a general time frame for the installation of the Second

Carrier’s Equipment and the Second Carrier’s carriage

service target commencement date from use of the

Shared Site.

(2) Unless the Carriers otherwise agree, the Second Carrier

is responsible for designing and undertaking all Make Ready

Work. The First Carrier **must** provide all cooperation that the

Second Carrier reasonably requires in undertaking the Make

Ready Work.

(3) The Second Carrier **must**, as soon as reasonably practicable,

submit to the First Carrier a Draft Construction and Work

Plan comprising draft plans and a construction timetable for

Make Ready Work and the Second Carrier’s Work Plan.

(4) The Draft Construction and Work Plan **must** include a

structural and electro-magnetic radiation analysis and follow

the carrying out of physical inspections.

(5) The Second Carrier **must** design the replacement Tower

to accommodate its Equipment and the First Carrier’s

Equipment and **must** not unreasonably refuse to

accommodate the First Carrier’s reasonable requirements

as to its future Equipment.

(6) The Draft Construction and Work Plan is subject

to acceptance by the First Carrier, which is not to be

unreasonably withheld, and the Second Carrier **must** give

reasonable consideration to any amendments to that Plan

that the First Carrier may request.

(7) Unless the First Carrier notifies the Second Carrier in writing

within:

(a) fifteen Business Days in the case of a PMTS tower; or

(b) twenty five Business Days in all other cases,

of the receipt of the Draft Construction and Work Plan that

it does not wish to proceed on the basis of that plan, it will be

deemed to have accepted the Draft Construction and Work

Plan and the Draft Construction and Work Plan will become

the Final Construction and Work Plan.

(8) As part of the formulation of the Final Construction and

Work Plan, the parties **must** agree, subject to sub-clause

2.2(9) of Schedule A2, on assigned places on the Tower

and/or Tower Site for each Carrier to locate its own

Equipment and a timetable for the installation of Equipment.

(9) The First Carrier has the right to put its Equipment at the top

of the Tower and anywhere not reserved in the Final

Construction and Work Plan to a Second Carrier.

(10)If the Draft Construction and Work Plan is rejected, the First

Carrier **must** give its reasons for such rejection and the

Second Carrier may revise the Draft Construction and Work

Plan and resubmit it in accordance with sub-clause 2.2(3).

(11)The First Carrier may reject the Draft Construction and Work

Plan only if:

• it is inconsistent with the proposal or plans provided

as part of the Facilities Access Application; or

• the plan is not prepared in accordance with standard

industry practices and/or standards, or, if the First

Carrier has higher standards or practices which are

reasonable, in accordance with the First Carrier’s

standards or practices; or

• it is likely to cause operational difficulties; or

• it was not prepared by a suitably qualified and

experienced engineer.

In the event that agreement cannot be reached between the

First and Second Carrier on the Draft Construction and Work

Plan, the Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code.

**2.3 Conduct of Make Ready Work**

(1) Unless otherwise agreed by the parties, the Second

Carrier **must** bear the costs of designing and constructing

a replacement PMTS Tower, including Make Ready Work

and the doing of all things required by this Code.

(2) Subject to sub-clause 2.3(3) of Schedule A2, the Second

Carrier **must** carry out Make Ready Work in accordance with

the agreed Construction and Work Plan and provide a copy

of diagrams depicting the new or replacement Tower and the

location of the Second Carrier’s installed Equipment.

(3) If, after the commencement of Make Ready Work, the

Second Carrier determines that it must depart from the Final

Construction and Work Plan, then it may do so, providing

it has secured the agreement of the First Carrier that such

a departure would not have a material impact on the First

Carrier’s future use of the Tower and/or Tower Site.

(4) In carrying out the Make Ready Work, the Second Carrier

**must** take all reasonable steps to ensure that all such work

is carried out, so far as is practicable, within the construction

timetable notified pursuant to clause 2.2(5) of Schedule A2

and **must** notify the First Carrier of any delays which it

anticipates as soon as practicable after becoming aware

that such delays will occur. Upon completion of the

replacement Tower, which **must** occur when the replacement

Tower is reasonably capable of bearing the Equipment of the

Second Carrier and the First Carrier, the Second Carrier **must**

give notice of its completion to the First Carrier.

(5) Each Carrier will be responsible for the installation of its

own Equipment on the replacement Tower once constructed.

(6) Unless the parties otherwise agree, all the Equipment

installed on an existing Tower **must** be transferred (at the

Second Carrier’s cost) to the replacement Tower in a manner

that:

(a) to the extent reasonably practicable, avoids; or

(b) if unavoidable, to the extent reasonably practicable,

minimises;

any Outage in transferring the Equipment to the replacement

Tower. To minimise the impact of any Outage, the Carriers

**must** schedule the transference of the Equipment at a time

when, in the reasonably formed view of the First Carrier, that

Equipment is carrying the least traffic but also at a time that

is reasonably practical to do that work.

(7) Once the location of the First Carrier’s Equipment upon the

replacement Tower has been determined, and any part of

it is installed, the Second Carrier **must not** (except with the

consent of the First Carrier, which **must not** be unreasonably

withheld) require that it be relocated elsewhere upon the

replacement Tower. A First Carrier is not required to consent

to the relocation of its Equipment unless the Second Carrier

pays the reasonable cost of such relocation and the location

to which the Equipment is relocated does not result in

a material reduction of amenity in its use.

(8) In the event that a First Carrier does not consider that

a Second Carrier has met its obligations under sub-clause

2.3 of Schedule A2, then Carriers **must** engage in dispute

resolution, as set out in Chapter 2 of the main Code.

**2.4 Completion inspection**

(1) Unless Carriers otherwise agree, upon completion of

installation work by the Second Carrier, there **must** be a joint

on-site inspection between the First Carrier and Second

Carrier to ensure that Make Ready Work and installation

work have been satisfactorily completed and that facilities

access and installed Equipment are in accordance with the

details of the approved Facilities Access Application.

(2) The scope of the completion inspection **must** be agreed

between the Carriers.

(3) Unless Carriers otherwise agree, within 20 Business Days of completion of installation work by the Second Carrier, the Second Carrier must provide written notification to the First Carrier that the installation work is complete.

**ANNEXURE B.**

**UNDERGROUND FACILITIES**

**Part 1.— Preliminary Assessment of Access**

**1.1 Exchange of information**

(1) Where the Second Carrier wishes to explore the sharing

of an existing Underground Facility of the First Carrier, the

Carriers **must** exchange information within a reasonable

period of time to assist the Second Carrier to make

a preliminary assessment as to whether the Underground

Facility would be suitable for the Second Carrier to install

Equipment for use in connection with the supply of

a carriage service. This information may include details of

any relevant certificate relating to technical feasibility in

respect of that Underground Facility issued by the ACCC

under Part 5 of Schedule 1 of the *Telecommunications Act 1997*.

(2) If requested by the Second Carrier the exchange of

information may include, subject to subclause 1.1(4) of

Annexure B, a plan or map of the Underground Facility of

the First Carrier, a price schedule (if any) for the provision

of information, whether there are Currently Planned

Requirements and whether there are applications from other

Carriers to share the Underground Facility.

(3) The Second Carrier’s request for information **must** relate

to a particular location or specify particular locations

between which the Second Carrier is seeking access.

(4) Where an access request for the purpose of installing

a Second Carrier’s Equipment between two locations

involves a large number of alternative Underground Facilities

or routes, it may be impractical for the First Carrier to

provide plans or maps for all available routes. In this

situation, the Second Carrier may request that the First

Carrier identify alternative suitable routes and that it

undertake a subsequent preliminary study assessing

alternative routes identified by the Second Carrier with

a view to identifying the most appropriate Underground

Facility or facilities. The identification of suitable alternative routes may include physical access to facilities, as set out in clause 1.2 of Annexure B.

(5) The First Carrier may charge a cost based fee for information

about alternative routes or for a preliminary study.

(6) If information about alternative routes is requested, it **must**

be provided within ten Business Days. If a preliminary study

is requested, the results of a preliminary study **must** be

provided within:

(i) fifteen Business Days in the case of routes equal to

or less than 2 kilometres;

(ii) twenty Business Days in the case of routes longer than

2 kilometres and less than 10 kilometres; and

(iii) twenty five Business Days in the case of routes longer

than 10 kilometres.

(7) Information provided under this clause is subject to the

confidentiality provisions of clause 2.1 of the main Code.

(8) A First Carrier does not have to comply with sub-clause

1.1(1) of Annexure B if the provision of information would

breach obligations the First Carrier owes to a third party

under whose property the Underground Facility has to

be accessed.

**1.2 Physical access**

(1) If the Second Carrier seeks to visit an Underground Facility

for the purpose of making a bona fide Facilities Access

Application for access to that Underground Facility, it **must**

notify the First Carrier of its intention to conduct a physical

inspection of that Underground Facility and complete a

Physical Inspection Notification form provided by the First

Carrier as part of its Information Package. One notification

may be used for multiple visits to the Underground Facility

over a period of one month.

(2) The Physical Inspection Notification **must** contain the

following information:

(i) reasons for physical inspection; and

(ii) details of the kind and location of the Underground

Facility to which physical inspection is sought; and

(iii) the date(s) and time(s) at which the Second Carrier

wishes to visit the Underground Facility; and

(iv) other matters as agreed between the parties.

(3) Subject to sub-clause 1.2(4) of Annexure B and obligations

imposed by the Lessor of the relevant Underground Facility

or of a third party under whose property the Underground

Facility has to be accessed, the Second Carrier’s personnel

**must** be permitted physical access to the Underground

Facility:

(i) in an orderly manner and on a non-discriminatory basis;

and

(ii) as soon as reasonably practicable and within three

Business Days of giving notification of a physical

inspection.

(4) Where there is a significant risk to the health and safety

of a Carrier’s employees, agents or contractors or to the

integrity of the First Carrier’s network or facility from an

unaccompanied physical inspection by a Second Carrier’s

employees, agents or contractors (the ‘representatives’), the

First Carrier may require, at the Second Carrier’s expense,

that the Second Carrier’s representatives be accompanied

by an employee of the First Carrier and, prior to granting

a Second Carrier’s representatives access to the Underground

Facility for a physical inspection, that the Second Carrier’s

representatives undergo an induction course which is

relevant to the physical inspection. An induction course

may include accompanied visits to the Underground Facility.

In determining whether there is a significant risk to the

integrity of the network or facility from unaccompanied

physical access, regard should be had to the importance

of the facility to the First Carrier’s network and the

qualifications of the Second Carrier’s representatives.

(5) The Second Carrier’s representatives are not required to

be accompanied by an employee of the First Carrier nor

to undergo an induction course where there is no significant

risk to the health and safety of a Carrier’s employees, agents

or contractors or to the integrity of the First Carrier’s network

or facility from unaccompanied access. Nonetheless, the

First Carrier may choose to accompany the Second Carrier’s

representatives provided that the Second Carrier may gain

physical access in accordance with the notification times

governed by sub-clause 1.2(3) of Annexure B and the First

Carrier meets its own cost of attending.

(6) In the event that there is disagreement over whether there

exists a significant risk to the health and safety of a Carrier’s

employees, agents or contractors or to the integrity of the

First Carrier’s network or facility, then both Carriers **must**

engage in dispute resolution, as set out in Chapter 2 of the

main Code. In the period prior to the disagreement being

resolved, the First Carrier may require accompanied

physical access.

(7) When accessing the Underground Facility, the Second

Carrier’s representatives **must** comply with all reasonable

directions from the First Carrier, including directions relating

to its engineering practices.

(8) The Second Carrier **must** retain a log recording the date,

time and duration of visits by its personnel to the

Underground Facility for which the other Carrier is the First

Carrier, and the First Carrier will be entitled to inspect this

log on reasonable notice.

**Part 2.— Facilities Access Application**

**2.1 Lodgement of Facilities Access Application**

(1) If the Second Carrier wishes to share an existing

Underground Facility of the First Carrier , it **must** submit

to that First Carrier a Facilities Access Application for its

review and acceptance.

(2) Subject to the provision of appropriate confidentiality

assurances by the First Carrier in respect of the nondisclosure

of information, and any existing Master Access

Agreement regarding security requirements, a Facilities

Access Application **must** include creditworthiness

information that includes, but is not limited to:

(a) a letter, signed by the company secretary or duly

authorised officer of the Second Carrier, stating that the

Second Carrier is not insolvent and not under any

external administration (as defined in the Corporations

Law) or under similar form of administration under any

laws applicable to it in any jurisdiction;

(b) the Second Carrier’s credit rating, if any has been

assigned to it;

(c) if requested, a copy of the Second Carrier’s most recent

published audited balance sheet and published audited

profit and loss statement together with any notes that

form part of those accounts; and

(d) other relevant financial data as agreed between the First

Carrier and Second Carrier.

Note: refer to clause 4.2 of the main Code for provisions relating to the

nature and negotiation of a Master Access Agreement.

(3) The Second Carrier **must** warrant the accuracy of any

creditworthiness information provided to the First Carrier.

(4) Pursuant to sub-clause 2.1(2) of Annexure B, in the event

that Carriers are unable to agree on application of the

warrant specified in that sub-clause, Carriers **must** engage in

dispute resolution, as set out in Chapter 2 of the main Code.

(5) The Facilities Access Application may include information

to be agreed from time to time between the parties, but it is

intended that the Facilities Access Application relating to the

Underground Facility **must** include at least the following

information:

(i) specifications for Make Ready Work; and

(ii) time required for access to be delivered; and

(iii) a description of the Equipment to be installed by the

Second Carrier, including any characteristics of the

Equipment requiring special consideration and any

relevant structural analyses; and

(iv) a Work Plan which sets out the method and procedures

that the Second Carrier will use in installing its

Equipment in the Underground Facility; and

(v) preferred route including any required intermediate

points and any alternate routes and alternative

intermediate points; and

(vi) characteristics of the Equipment and conditions or

procedures applicable to the installation, operation

or maintenance of the Equipment which do not conform

with, or require special consideration under, the First

Carrier’s engineering practices; and

(vii)the general timeframe (measured from the date of any

Order made by the Second Carrier in accordance with

clause 3 of Schedule B1) within which the Second

Carrier wishes to be able to commence installation

of the Equipment; and

(viii)the expected term of access required by the Second

Carrier to the Underground Facility; and

(ix) any relevant changes or updates to previously supplied

information.

(6) The First Carrier **must** provide technical information

in relation to the Underground Facility, if requested, to

enable the Second Carrier to complete its Facilities Access

Application.

(7) To the extent necessary to assist the First Carrier to assess

a Facilities Access Application, the Second Carrier **must**

include technical information in its Facilities Access

Application, such as structural analyses and electromagnetic

energy tests, on how it proposes to install its Equipment

under its Work Plan and, if the Facilities Access Application

proposes that the Second Carrier undertake Make Ready

Work, how it proposes to undertake that Make Ready Work.

(8) Further to sub-clause 2.1(6) of Annexure B, the Second

Carrier **must** warrant the accuracy of all technical

information included in support of its Facilities Access

Application and provide details to the First Carrier of the

qualifications of the persons responsible for providing that

information.

(9) Pursuant to sub-clause 2.1(7) of Annexure B, in the event

that Carriers are unable to agree on the application of the

warrant specified in sub-clause 2.1(6) of Annexure B,

Carriers **must** engage in dispute resolution, as set out

in Chapter 2 of the main Code.

**2.2 Assessment of Facilities Access Application**

For access to Underground Facilities which are less than 2 km,

between 2 and 10 km and more than 10 km in length, the First

Carrier **must** notify the Second Carrier within fifteen, twenty

or twenty five Business Days respectively, or such other time

as agreed, whether:

(i) it accepts the application; or

(ii) it will reject the application.

**2.3 Proposal to reject an application**

(1) If the First Carrier proposes to reject the application of the

Second Carrier on technical grounds it **must** provide the

Second Carrier with a written explanation of its concerns

and meet within ten Business Days of receiving the

application to discuss those concerns. Carriers **must** make

reasonable endeavours to develop a strategy for managing

access to the Underground Facility which addresses the

reasonable concerns of each Carrier. An alternative strategy

may include a reasonable alternative route, if one is

available, or could be made available.

(2) After the initial meeting referred to in sub-clause 2.3(1)

of Annexure B, the First Carrier **must**, if requested by the

Second Carrier, within five Business Days of the Second

Carrier’s request, submit a request to the ACCC for the issue of a certificate under clause 35(3) of Schedule 1, Part 5 of

the Act. If the Second Carrier does not make such a request

within 15 Business Days of the final meeting, the First

Carrier may deem the Second Carrier’s application to have

been withdrawn. At the same time as the First Carrier

submits a request to the ACCC it shall notify the Second

Carrier of that request.

(3) In the event that, following a request from the First Carrier

and its assessment of that request, the ACCC does not issue

a certificate stating that access would not be technically

feasible, then, for the purposes of this Code, the First Carrier

will be deemed to have accepted the Facilities Access

Application.

(4) Where an application has been rejected by the First Carrier

for technical reasons, the Second Carrier is entitled to

resubmit an amended application at any time, and the

proposal **must** will be reconsidered in accordance with

clause 2.2 of Annexure B. If the amended application is

re-submitted within one month of the previous application

then the First Carrier **must** provide the notification required

within ten Business Days of receiving an amended

application.

(5) If the First Carrier proposes to reject the application of the

Second Carrier on other than technical grounds, it **must**

provide the Second Carrier with a written explanation of its

concerns and meet with the Second Carrier within ten

Business Days of receiving the application to discuss those

concerns. Carriers **must** make reasonable endeavours

to develop a strategy for managing access to the Eligible

Facility which addresses the reasonable concerns of each

Carrier.

**Part 3.— Termination of Access**

**3.1 Standard term of access**

Unless otherwise agreed between the parties, a standard access

term for a particular Underground Facility should be the lesser of:

(a) fifteen years; or

(b) the term of the First Carrier’s rights of tenure in respect

of that Underground Facility; or

(c) the period equal to the remaining economic life of the

Underground Facility.

**3.2 Termination by First Carrier**

In regard to an Underground Facility, if the First Carrier:

• intends to decommission the Underground Facility and

terminate the provision of access to that Underground

Facility, and

• the Second Carrier wishes to continue to use that

Underground Facility;

(a) the Carriers **must** endeavour to agree on arrangements

to permit the Second Carrier to continue to use the

Underground Facility;

(b) the Second Carrier that was the first Carrier to share the

Underground Facility (and if shared initially by more than

one Second Carrier, by agreement between the Second

Carriers) **must** take ownership of the Underground Facility

from the First Carrier;

(c) the First Carrier **must** indemnify the Second Carrier against

any claims in respect of the First Carrier’s use of the

Underground Facility;

(d) upon vacation of the Underground Facility by the First

Carrier, ownership of the Underground Facility **must** be

assigned to the Second Carrier, whereupon that Second

Carrier will be the First Carrier;

(e) the Second Carrier which takes the ownership of the

Underground Facility **must** indemnify the First Carrier

against any claims, damages, expenses or liabilities in

respect of the Underground Facility arising after the date

of the assignment or novation.

**3.3 Termination by Second Carrier**

If the Second Carrier decides to cease using an Underground

Facility and the First Carrier wishes to continue using the

Underground Facility, the Second Carrier **must** indemnify the First

Carrier against any claims in respect of the Second Carrier’s use

of the Underground Facility.

**SCHEDULE B1. ACCESS PROCEDURE —**

**FIRST CARRIER PERFORMS**

**MAKE READY WORK**

**1. Conduct of a Detailed Field Study**

(1) Within twenty Business Days of the First Carrier accepting

the Second Carrier’s Facilities Access Application, the

Second Carrier may make a written request for a Detailed

Field Study to be completed by the First Carrier. The

Detailed Field Study **must** encompass a confirmation (or

variation) of the results of the First Carrier’s preliminary

assessment of access to the Underground Facility and the

development of a Make Ready Work proposal by the First

Carrier.

(2) The Second Carrier’s written request for a Detailed Field

Study **must** contain at least the following:

(i) a formal request for a Detailed Field Study;

(ii) a reference to the preceding preliminary assessment

of access;

(iii) any relevant changes or updates to previously supplied

information; and

(iv) a proposed timeframe for meetings with the First Carrier,

to be held during the period in which the First Carrier

**must** complete the Detailed Field Study in order to

discuss and endeavour to agree on the matters listed

at sub-clause 1(3) of this Schedule.

(3) The Parties **must** discuss the request for a Detailed Field

Study and endeavour to agree on:

(i) which parts of the Detailed Field Study, Make Ready

Work and work for installation of the Equipment in the

First Carrier’s Underground Facility are to be carried out

by each of the Parties;

(ii) what information is to be exchanged in order for each

Party to undertake tasks agreed in sub-clause 1(3)(i)

of Schedule B1;

(iii) timing targets for the exchange of information under

sub-clause 1(3)(ii) of Schedule B1 and completion of the

Detailed Field Study;

(iv) matters relating to the timing of any necessary

switch-offs during Make Ready Work and/or the

installation of the Equipment;

(v) the Work Plan setting out the method and procedures

that the Second Carrier will use in installing its

Equipment in the Underground Facility;

(vi) time required to deliver access;

(vii)charges for the undertaking of the Detailed Field Study;

and

(viii)any other outstanding issues in connection with the

Detailed Field Study.

(4) If a Detailed Field Study request is made to the First Carrier

then, within the time period specified in clause 1(5)

of Schedule B1, the First Carrier **must** advise the Second

Carrier on:

(i) confirmation of the results of the preliminary assessment

of access or details and explanation of any variation to

the results of the preliminary assessment of access;

(ii) details of Make Ready Work required (including who

will be responsible for undertaking each part) and the

time required to perform the Make Ready Work;

(iii) cost of Make Ready Work;

(iv) the basis upon which access charges will be levied;

(v) time required to deliver access after an Order has been

made by the Second Carrier in accordance with clause

3 of Schedule B1;

(vi) the Underground Facility’s security classification for

physical access purposes; and

(vii)other matters as agreed between the parties.

(5) If the Eligible Facility is an Underground Facility which

is equal to or less than 2 km in length, the time specified for

completion of a Detailed Field Study is as soon as is

reasonably practicable and at least within fifteen Business

Days of the request for a Detailed Field Study. For

Underground Facilities which are more than 2 km but less

than 10 km in length, the time specified for completion of

a Detailed Field Study is as soon as is reasonably practicable

and at least within twenty Business Days of the request for a Detailed Field Study. For Underground Facilities which

are more than 10 km in length, the time specified for

completion of a Detailed Field Study is as soon as

is reasonably practicable and at least within twenty five

Business Days of the request for a Detailed Field Study

(6) If the First Carrier discovers a material error in a valid advice

before the First Carrier has accepted an Order by the Second

Carrier in accordance with clause 3, it **must** advise the

Second Carrier as soon as practicable and correct the

advice. Where the corrected advice curtails, reduces or

delays access to the Underground Facility, the First Carrier

**must** consult with the Second Carrier on alternatives which

would satisfy the Second Carrier’s requirements, either on

an interim or continuing basis.

**2. Time Extension for the conduct**

**of a Detailed Field Study**

(1) If the First Carrier considers that it is unable to complete

a Detailed Field Study in regard to access to an Eligible

Facility within the period specified in sub-clause 1(5) of

Schedule B1, and requires further time to consider the

access application, the parties **must** make reasonable

endeavours, acting in good faith, to discuss and agree on

a period for a time extension in which to complete that

study.

(2) If agreement on a time extension cannot be reached then

Carriers **must** engage in dispute resolution, as set out in

Chapter 2 of the main Code.

(3) In the event that carriers agree to the appointment of an

independent expert to determine whether an extension

should be given , or the ACCC is required to arbitrate on the

matter, then that expert, or the ACCC, **must** consider the

following factors to the extent those factors are relevant:

• the complexity of the request for access;

• the complexity or remoteness of the Underground

Facility to which access has been sought;

• the number of requests, both internal and external,

which the First Carrier has received;

• whether Detailed Field Studies have been previously

undertaken in relation to the Eligible Facility;

• weather conditions in the area where the Eligible

Facility is located;

• the time taken for the Second Carrier to provide

additional information; and

• the time taken to evaluate any additional information

provided by the Second Carrier.

(4) Any time extension granted by an independent expert or the

ACCC **must** take effect immediately after the expert or the

ACCC notifies the First and Second Carrier of its decision.

If the expert or ACCC refuses to grant an extension, then the

First Carrier **must** complete the Detailed Field Study within

the period specified in sub-clause 1(5) of Schedule B1 or

some other period determined by the expert or the ACCC.

(5) The First Carrier **must** continue to carry out the Detailed

Field Study pending the decision of an independent expert

or the ACCC and, where appropriate, it **must** inform that

expert of the progress of performing the Detailed Field Study.

**3. Order for access by Second Carrier**

(1) If the Second Carrier wishes to make an Order for access

to the Underground Facility, it **must** do so within thirty

Business Days of being advised of the results of the relevant

Detailed Field Study.

(2) An Order **must** be consistent with the Equipment, plant,

work, costs and charge details specified in the Detailed Field

Study. If the First Carrier determines that an Order in whole

or any part thereof is inconsistent with the relevant Detailed

Field Study, it **must** consult with the Second Carrier with

a view to overcoming any inconsistencies within five

Business Days.

(3) The Second Carrier’s Order **must** specify in writing:

(a) the term of access requested;

(b) any reasonable written instructions applicable to the

installation of Equipment pursuant to Schedule 1 of the

Act, which **must** be no more stringent than those

applying to the First Carrier;

(c) a description of Equipment to be installed by the

Second Carrier and/or a description of the Underground

Facility; and

(d) the required delivery date and physical arrangements

for the access to the Underground Facility and/or

Equipment to be installed by the Second Carrier

referred to in sub-clause 3(3)(c) of Schedule B1.

(4) If it is necessary to obtain:

(a) permits, approvals, or licences required from any

governmental, regulatory or public authority, agency

or body; and/or

(b) any consent of any owner, landlord, licensor or

mortgagee (including any agreement, determination

or consent required under any Aboriginal, heritage,

or native title rules);

in relation to the installation, repair, testing, operation,

maintenance, or removal of Equipment, the Second Carrier

**must make** reasonable endeavours to obtain the same.

It should bear the cost of obtaining, such permission,

approvals and it **must** provide a copy of all permits,

authorisations, consents and other approvals to the First

Carrier. If the law or government regulations require that the

First Carrier obtain such permission, approvals or

authorisations, then it **must** make reasonable endeavours to

do so but at the Second Carrier’s expense. If any such permit,

approval, licence, consent, agreement or determination

cannot be obtained then the Second Carrier **must not** install

its Equipment.

**4. Response to Order for access**

(1) Within ten Business Days of a receipt of an Order the First

Carrier **must** give written acknowledgment of the receipt

of that Order and provide a Response.

(2) A Response to an Order **must** specify, in writing:

(i) details of Make Ready Work;

(ii) the applicable access charge;

(iii) the description of Underground Facility to which access

is sought and the Equipment to be installed by the

Second Carrier;

(iv) the Advised Delivery Date; and

(v) any reasonable instructions applicable to the Equipment

to be installed by the Second Carrier, which **must** be no

more stringent than those applying to the First Carrier.

(3) Subject to sub-clause 4(4) of Schedule B1, the First Carrier

**must** deliver access to the Underground Facility in respect

of which an application has been accepted on the Advised

Delivery Date or as otherwise agreed.

(4) The First Carrier is not obliged to deliver access on the

Advised Delivery Date if Make Ready Work cannot be

reasonably completed, due to unforseen circumstances

or circumstances beyond the First Carrier’s control before

that date, and notice has been given to the Second Carrier,

in which case access will be delivered on a agreed date,

which **must** be as soon as reasonably practicable after the

Advised Delivery Date.

(5) If access to the Underground Facility has been granted and

notwithstanding the Make Ready Work, the Second Carrier

is unable to install its Equipment, it **must** consult the First

Carrier’s Proper Officer with a view to resolving any issues

which are the responsibility of the First Carrier under this

Code. The First Carrier **must** complete any work for which

it is responsible under this Code as soon as reasonably

practicable following such consultation.

**5. Delivery of Access**

(1) A First Carrier **must** notify the Second Carrier of Delivery

of Access by a facsimile advice, at the completion of Make

Ready Work done by the First Carrier.

(2) Prior to the Delivery of Access, the First Carrier **must**

perform all Make Ready Work which it has agreed

to perform and perform that work as soon as reasonably

practicable.

**6. Variation of Make Ready Work**

(1) If, after the commencement of specific Make Ready Work,

the First Carrier determines that the actual cost of carrying

out the Make Ready Work is likely to exceed the Make

Ready Costs specified in the acceptance of the Order

by more than a certain proportion as agreed between the

parties because of unforeseen circumstances

or circumstances beyond its control:

(i) the First Carrier **must** immediately suspend all work

on the Make Ready Work and advise the Second Carrier

accordingly; and

(ii) as soon as practicable, the First Carrier **must** provide

a Work Variation Report to the Second Carrier setting

out the nature and extent of the additional Make Ready

Work, the revised Make Ready Costs and any revised

Advised Delivery Date; and

(iii) upon receipt of a Work Variation Report, the Second

Carrier **must** either request the First Carrier to carry out

the Make Ready Work at the revised Make Ready Costs

(and by the revised Delivery Date) or inform the First

Carrier that it does not wish to proceed with the Make

Ready Work (in which case the Second Carrier will be

liable to pay Make Ready Costs only to the extent then

incurred by the First Carrier).

(2) The First Carrier **must not** incur any penalty or liability to the

Second Carrier by reason of the suspension of Make Ready

Work pursuant to this paragraph and the Advised Delivery

Date will, to the extent required, be adjusted to take into

account the additions to or variations in Make Ready Work.

**7. Cancellation and variation**

**of accepted Orders**

If the Second Carrier cancels or varies its Order between the date

of acceptance and the Advised Delivery Date, the First Carrier

**must** make reasonable endeavours to mitigate any loss by seeking

to re-use the Equipment or Underground Facility. The Second

Carrier **must** pay the amount of any loss suffered by the First

Carrier, to the extent that it has not been mitigated.

In this paragraph, ‘loss’ means

(a) the costs which have been necessarily incurred by the First

Carrier on the basis of the Order and which will not be

otherwise reimbursed following the cancellation of the

Order;

(b) the costs of capital relating to the holding of Equipment

or Underground Facility until use, disposal or reuse, and any

costs necessarily incurred in arranging for such use, disposal

or reuse.

**8. Installation of Equipment by Second Carrier**

The Second Carrier **must** install its Equipment in accordance with

the Work Plan included in its Facilities Access Application and

within three months of the completion of Make Ready Work.

**9. Completion Inspection**

(1) Unless Carriers otherwise agree, upon completion of installation work by the Second Carrier, there must be a joint on-site inspection by the First Carrier and Second Carrier to ensure that Make Ready Work and installation work have been satisfactorily completed and to agree whether space accessed and installed Equipment are in accordance with the details of the approved Facilities Access Application. The scope of the completion inspection mustbe agreed to by the Carriers.

(2)  Unless Carriers otherwise agree, within 20 Business Days of completion of installation work by the Second Carrier, the Second Carrier must provide written notification to the First Carrier that the installation work is complete.

**SCHEDULE B2. ACCESS PROCEDURE —**

**SECOND CARRIER PERFORMS**

**MAKE READY WORK**

**Access to Existing Underground Facility**

**1. Construction and Work Plan**

(1) Within fifteen Business Days of notifying the Second Carrier

that it agrees to share an Underground Facility, the First

Carrier **must**, subject to clause 2.1 of the main Code,

provide the Second Carrier with any information reasonably

requested by it for the purpose of it preparing the Draft

Construction and Work Plan referred to in sub-clause 1.1(2)

of Schedule B2, including provision of plans and surveys for

the Underground Facility and/or Equipment located in it,

provided that nothing in this clause obliges a First Carrier

to provide information if the provision of that information

would result in the First Carrier breaching obligations it

owes to third parties.

(2) After being provided with the information and material

referred to in sub-clause 1(1) of Schedule B2, the Second

Carrier **must**, within twenty Business Days, submit to the

First Carrier a Draft Construction and Work Plan, comprising

draft plans and a construction timetable for Make Ready

Work and the Second Carrier’s Work Plan, which **must**

include information relating to the:

• installation of all Equipment; and

• the method and procedures that the Second Carrier

will use in installing its Equipment in the Underground

Facility.

(3) The Second Carrier is responsible for ensuring that:

(i) the Draft Construction and Work Plan is prepared

by a suitably qualified and experienced engineer;

(ii) the Draft Construction and Work Plan includes

a structural analysis and that physical inspections have

been carried out;

(iii) the Draft Construction and Work Plan is prepared

in accordance with standard industry practices, or, if the

First Carrier has higher standards which are reasonable,

in accordance with the First Carrier’s practices; and

(iv) all relevant checks, inquiries and analyses necessary

for the preparation of the Draft Construction and Work

Plan are performed and that they are performed in

accordance with standard industry practice or, if the

First Carrier has higher standards which are reasonable,

in accordance with the First Carrier’s practices.

(4) The Draft Construction and Work Plan is subject

to acceptance by the First Carrier, which is not to

be unreasonably withheld.

(5) The First Carrier **must** notify the Second Carrier, in writing,

within fifteen Business Days of the receipt of the Draft

Construction and Work Plan, if it proposes to reject the Draft

Construction and Work Plan, or if it agrees to proceed on

the basis of that Draft Construction and Work Plan

to develop a Final Construction and Work Plan.

(6) As part of the formulation of the Final Construction and

Work Plan, the parties **must** agree on assigned places in

the Underground Facility for each Carrier to locate its own

Equipment and a timetable for the installation of that

Equipment.

(7) Before deciding to reject the Draft Construction and Work

Plan, the First Carrier **must**, within ten Business Days of

receipt of the Draft Construction and Work Plan, identify

its concerns so as to permit the Second Carrier to revise

the Draft Construction and Work Plan and resubmit it

in accordance with sub-clause 1.1(2) of Schedule B2.

(8) The First Carrier **must** identify reasons for rejecting the Draft

Construction and Work Plan and may only reject the Draft

Construction and Work Plan if:

• it is inconsistent with the proposal or plans provided

as part of the Facilities Access Application;

• the plan is not prepared in accordance with standard

industry practices and/or standards, or, if the First

Carrier has higher standards or practices which are

reasonable, in accordance with the First Carrier’s

standards or practices; or

• it is likely to cause substantial operational difficulties; or

• it was not prepared by a suitably qualified and

experienced engineer.

In the event that agreement cannot be reached between the First

and Second Carrier on the Construction and Work Plan, the

Carriers **must** engage in dispute resolution, as set out in Chapter

2 of the main Code.

**2. Permits and approvals**

(1) If it is necessary to obtain:

(a) any permits, approvals or licences from any

governmental, regulatory or public authority, agency

or both; and/or

(b) any consent of any owner, landlord, licensor or

mortgagee (including any agreement, determination

or consent required under any Aboriginal, heritage or

native title laws),

in relation to any Make Ready Work, the Second Carrier **must**

make reasonable endeavours to obtain the same, and it **must**

bear the cost of obtaining such permission, approvals,

licences, consent, agreement or determination and it **must**

provide a copy of all permits, authorisations, consents and

other approvals to the First Carrier. If the law or government

regulations require that the First Carrier obtain such

permission, approvals or authorisations, then it **must** make

reasonable endeavours to do so but at the Second Carrier’s

expense. If any such permit, approval, licence, consent,

agreement or determination cannot be obtained then the

Second Carrier **must not** install its Equipment.

(2) The Second Carrier **must** commence obtaining any such

permit, approval, licence or consent referred to in sub-clause

2(1) of Schedule B2 and commence ordering and installing

its Equipment as soon as reasonably practicable.

(3) A Carrier **must** provide such co-operation which the other

Carrier reasonably requires in obtaining any permission,

approvals, licences necessary for occupation of the

Underground Facility as a Shared Underground Facility.

**3. Conduct of Make Ready Work**

(1) The Second Carrier **must** bear all costs of preparing and

establishing Make Ready Work and all reasonable legal and

other costs incurred by the First Carrier and any existing

Second Carrier or Third Party User using the Underground

Facility.

(2) Subject to sub-clause 3(3) of Schedule B2, the Second

Carrier **must** carry out Make Ready Work in accordance with

the agreed Construction and Work Plan and provide a copy

of diagrams showing any modifications made to the Eligible

Facility and the location of the Second Carrier’s installed

Equipment.

(3) If, after the commencement of Make Ready Work, the

Second Carrier determines that it must depart from the Final

Construction and Work Plan, then it may do so, providing

it has secured the agreement of the First Carrier that such

a departure would not have a material impact on the First

Carrier’s use of the Underground Facility. In the event that

the Carriers cannot agree on whether a variation to Make

Ready Work would have a material impact on the First

Carrier’s use of the Underground Facility, then the Carriers

**must** engage in dispute resolution, as set out in Chapter 2

of the main Code.

(4) In carrying out the Make Ready Work, the Second Carrier

**must** take all reasonable steps to ensure that all such work

is carried out so far as practicable within the construction

timetable included in the Final Construction and Work Plan

and **must** notify the First Carrier of any delays which it

anticipates as soon as practicable after becoming aware

that such delays will occur.

(5) As soon as reasonably practicable after the completion

of Make Ready Work, the Second Carrier **must** install its

Equipment in accordance with the Final Construction and

Work Plan that has been accepted by the First Carrier. Each

Carrier will be responsible for the installation of its own

Equipment in any existing Underground Facility.

(6) Physical access to undertake Make Ready Work and install

Equipment **must** be in accordance with the procedures

set out in clause 1.2 of Annexure B. In addition, a First

Carrier may choose to accompany the Second Carrier’s

representatives in undertaking the Make Ready Work or

installing its equipment provided that the Second Carrier

may gain physical access in accordance with the notification

times set out in clause 1.2 of Annexure B and that the First

Carrier meets its own cost of attending.

**4. Completion inspection**

(1) Unless Carriers otherwise agree, upon completion of installation work by the Second Carrier, there must be a joint on-site inspection by the First Carrier and Second Carrier to ensure that Make Ready Work and installation work have been satisfactorily completed and to agree whether space accessed is in accordance with an approved Facilities Access Application. The scope of the completion inspection mustbe agreed to by the Carriers.

(2)  Unless Carriers otherwise agree, within 20 Business Days of completion of installation work by the Second Carrier, the Second Carrier must provide written notification to the First Carrier that the installation work is complete.

Notes to *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*

Legislation history

This table sets out details of the legislation history of *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities.*

| Title | Gazettal or FRLI registration | Commencement date | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities (F2005B01098) | 13 October 1999 | 13 October 1999 |  |
| A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities Variation 2013 (F2013L01732) | 23 September 2013 | 24 September 2013 |  |
| A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities Amendment 2020 (No. 1) (F2020L00692) | 11 June 2020 | 12 June 2020 |  |

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| Telstra Corporation and Other Legislation Amendment Act 2021 | 140, 2021 | 13 Dec 2021 | Sch 2: 1 January 2023 (s 2(1) item 3) | — |

**Amendment history**

|  |  |
| --- | --- |
| ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted exp. = expired or ceased to have effect | |
| Provision affected | How affected |
| Title | am. F2013L01732 |
| **Chapter 1** |  |
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| Renumbered Note 1 | am. F2013L01732 |
| Note 2 to cl 1.2.1 | ad. F2013L01732 |
| cl. 1.2.3 | rep. F2013L01732 |
| **Chapter 2** |  |
| cl. 2.1 | am. F2013L01732 |
| cl. 2.3 | am. F2020L00692 |
| cl. 2.4 | am. F2013L01732 |
| Note to cl. 2.4 | rep. F2013L01732 |
| cl. 2.6 | ad. F2013L01732 |
| **Chapter 3** |  |
| cl. 3.2 | am. F2020L00692 |
| **Chapter 4** |  |
| cl. 4.4 | am. F2013L01732 |
| cl. 4.5 | am. F2013L01732 |
| **Chapter 5** |  |
| cl. 5.6 | am. F2013L01732 |
| cl. 5.8 | am. F2013L01732 |
| **Chapter 6** |  |
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| **Annexure A** |  |
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| cl. 1.1 | am. F2013L01732 |
| cl. 2.3 | am. F2013L01732 |
| **Schedule A1 to Annexure A** |  |
| cl. 4 | am. F2013L01732 |
| cl. 9 | rs. F2020L00692 |
| **Schedule A2 to Annexure A** |  |
| cl. 1.4 | rs. F2020L00692 |
| cl. 2.4 | am. F2020L00692 |
| **Annexure B** |  |
| Heading to Part 1 | am. F2013L01732 |
| cl. 1.1 | am. F2013L01732 |
| scl. 2.3 | am. F2013L01732 |
| **Schedule B1 to Annexure B** |  |
| cl. 9 | rs. F2020L00692 |
| **Schedule B2 to Annexure B** |  |
| cl. 4 | rs. F2020L00692 |