

Explanatory Statement

Telecommunications Act 1997

Telecommunications Code of Practice (Installation Certificate Waivers) Amendment Instrument 2025

Issued by the Authority of the Minister for Communications

Purpose

The purpose of the *Telecommunications Code of Practice (Installation Certificate Waivers) Amendment Instrument 2025* (the Instrument) is to improve the operation of section 1A.7 of the *Telecommunications Code of Practice 2021* (the Code).

The Instrument enables a land owner and/or occupier to waive their statutory entitlement to receive installation certificates from a carrier in relation to a facility in certain circumstances. The amendment to section 1A.7 removes an unnecessary regulatory burden on land owners and occupiers where they elect to waive the requirement for an installation certificate, either through their own doing, or where an agreement between the land owner and occupier enables them to do so.

Authority

Divisions 2, 3 and 4 of Part 1 of Schedule 3 to the *Telecommunications Act 1997* (the Tel Act) provide authority for carriers to inspect land, install any determined “low-impact facilities” or “temporary defence facilities”, and to maintain telecommunications facilities.

Subclause 15(1) of Schedule 3 to the Tel Act provides that the Minister may, by legislative instrument, make a Code of Practice setting out conditions that are to be complied with by carriers in relation to any or all of the activities covered by Division 2, 3, or 4 of Part 1 of Schedule 3 to the Act (other than activities covered by a facility installation permit). Subclause 15(2) of Schedule 3 to the Tel Act requires that a carrier comply with the Code of Practice.

The Minister for Communications (the Minister) has made the Code under subclause 15(1) of Schedule 3 to the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The Instrument relies on that provision to amend the Code.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

Telecommunications carriers have certain specific legal powers under Schedule 3 to the Tel Act allowing them access to land to inspect the land, to install and to maintain

telecommunications facilities. The Tel Act also provides carriers with immunity from a range of state and territory laws when carrying out those activities, such as laws relating to land use, planning, design, construction, siting, tenancy, and environmental assessments and protection. This framework is known as the Powers and Immunities framework.

The Powers and Immunities framework is critical to the efficient deployment and maintenance of telecommunications networks. It minimises the regulatory burden on carriers so they can quickly and cost-effectively meet the community's need for access to affordable, fast and reliable telecommunications services in a nationally consistent way.

The Code sets out conditions with which carriers must comply when using the powers and immunities provided under Schedule 3 to the Tel Act to engage in activities relating to the inspection of land, the installation of certain types of telecommunications facilities, and the maintenance of telecommunications facilities. The conditions cover the pre-installation, installation and post-completion assurance phases of low-impact facility activities.

In 2021, the Code was updated to modernise obligations and conditions placed on carriers. One of the new conditions in 2021 was the requirement for carriers to provide installation certificates for certain types of facilities specified within section 3.2 in Part 3 of the *Telecommunications (Low-impact Facilities) Determination 2018*.

Subsection 1A.7(1) of the Code requires a carrier to provide a landowner and any occupier of the land with installation certificates within 60 days of completing the installation of a facility on the land.

Prior to the amendment made by the Instrument, subsection 1A.7(3) gave the landowner the ability to waive the requirement in subsection 1A.7(1).

Since the 2021 amendments to the Code, the three Mobile Network Operators (MNOs) have divested their tower assets. This has resulted in separate Mobile Network Infrastructure Providers (MNIPs) being established, that now own and manage tower infrastructure. Using the Powers and Immunities framework, carriers can install low-impact facilities on these towers. It is understood that often MNIPs can have commercial agreements in place with landowners that include their own assurance processes. There are also instances where occupiers have indicated an installation certificate is not required, but there is no way for them to waive such a requirement.

The changes would now allow either the land owner or the occupier to waive the installation certificates requirement, or either party to waive it on the other's behalf if an agreement is in place between them.

Details of the Instrument

The Instrument amends section 1A.7 of the Code to:

- continue to provide that the landowner can waive the installation certificates requirement for itself if there is an agreement in place between the landowner and the carrier that sets out an engineering assurance process (subsection 1A.7(3));
- give an occupier of the land the entitlement to waive the installation certificates requirement for itself if there is an agreement in place between the occupier and the carrier that sets out an engineering assurance process (subsection 1A.7(4));

- specify that the installation certificates requirements in subsection (1) are waived for *both* the landowner and the occupier if the following circumstances exist:
 - the landowner is a party to an agreement with the occupier that allows one party, or both parties, to waive the requirements of subsection (1); and
 - either the owner or the occupier is a party to an agreement with the carrier that includes a separate engineering assurance process for the installation of the facility; and
 - the waiving party has agreed with the carrier to waive the requirements of subsection (1).

An explanation of each provision of the Instrument is set out in the notes at **Attachment A**.

Regulation Impact Statement

The Office of Impact Analysis (OIA) considers that the amendments made by the Instrument are minor in nature and that an Impact Analysis is not required (OIA reference: OIA24-07926).

Consultation

In November 2024, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts released a consultation paper and exposure draft of proposed amendments to the Code, which was open to the public.

In total, 26 submissions were received from stakeholders.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

**Notes on the *Telecommunications Code of Practice (Installation Certificate Waivers)*
*Amendment Instrument 2025***

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications Code of Practice (Installation Certificate Waivers) Amendment Instrument 2025* (the Instrument).

Section 2 Commencement

This section provides for the Instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed online at www.legislation.gov.au.

Section 3 Authority

Section 3 provides that the source of authority for making the Instrument is subclause 15(1) of Schedule 3 to the *Telecommunications Act 1997* (the Tel Act). See also subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 Schedules

This section gives effect to Schedule 1 to the Instrument. Schedule 1 outlines the amendments made to the *Telecommunications Code of Practice 2021* (the Code).

Schedule 1 – Amendments

Telecommunications Code of Practice 2021

Item 1

This item repeals subsection 1A.7(3) and substitutes new subsections 1A.7(3), (4) and (5).

Summarised, the amendments allow for installation certificates to be waived in the following circumstances:

- For a landowner to waive the requirement for an installation certificate on their own behalf;
- For an occupier to waive the requirement for an installation certificate on their own behalf;
- For a landowner to waive the requirement for an installation certificate on their own behalf, and the behalf of the occupier, where an agreement is in place between the parties that enables them to do so; or
- For an occupier to waive the requirement for an installation certificate on their own behalf, and the behalf of the landowner, where an agreement is in place between the parties that enables them to do so.

The proposed changes do not diminish a carrier's requirement to provide an installation certificate to a landowner or occupier except in situations where the landowner or occupier elects to waive the requirement in accordance with subsections 1A.7(3) to (5).

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Telecommunications Code of Practice (Installation Certificate Waivers) Amendment Instrument 2025

The *Telecommunications Code of Practice (Installation Certificate Waivers) Amendment Instrument 2025* (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

Part 1 of Schedule 3 to the *Telecommunications Act 1997* (the Tel Act) provides authority for telecommunications carriers to inspect land, install low-impact facilities and maintain telecommunications facilities without having to comply with certain State and Territory laws, for example State and Territory planning laws.

The *Telecommunications Code of Practice 2021* (the Code) specifies conditions that a carrier must comply with when exercising those powers.

Under subsection 1A.7(1) of the Code, the carrier must provide the landowner and any occupier of the land with installation certificates within 60 days of completing the installation of a facility on the land. The requirement in subsection (1) does not apply if it has been waived.

The Instrument amends section 1A.7(3) of the Code to change the circumstances in which the requirements to provide installation certificates may be waived. In summary, installation certificates may be waived in the following circumstances:

- a landowner can waive the requirement for an installation certificate on their own behalf;
- an occupier can waive the requirement for an installation certificate on their own behalf;
- a landowner can waive the requirement for an installation certificate on their own behalf, and the behalf of the occupier, where an agreement is in place between the landowner and the occupier that enables them to do so; or
- an occupier can waive the requirement for an installation certificate on their own behalf, and the behalf of the landowner, where an agreement is in place between the occupier and the landowner that enables them to do so.

Human rights implications

The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Instrument is compatible with human rights as it does not raise any human rights issues.