

**A Code of Access to Telecommunications Transmission Towers, Sites of
Towers and Underground Facilities Variation 2013**

made under Schedule 1 Part 5 of the *Telecommunications Act 1997*

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AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Dated this 18th day of September 2013

Contents

- 1 Name of instrument
- 2 Commencement
- 3 Authority
- 4 Schedule

Schedule 1 – Variations

A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities, October 1999

1 Name of instrument

This instrument is the *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities Variation 2013*

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subclause 37(1) of Part 5 of Schedule 1 to the *Telecommunications Act 1997* (Cth)

4 Schedule 1 -- Variations

A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities, October 1999 is varied as set out in Schedule 1 to this instrument.

Schedule 1 – Variations

A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities, October 1999

- 1 Title**
Omit “October 1999”, substitute “September 2013”

- 2 Section 1.2.1 (before the note)**
Insert:
This Code does not apply to the extent (if any) it imposes an obligation on Telstra Corporation Ltd (Telstra) that has the effect of preventing Telstra from complying with an undertaking in force under section 577A, 577C or 577E of the *Telecommunications Act 1997* (the Act).

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 and an NBN corporation,
 - (2) the agreement relates to an NBN corporation’s access to an Eligible Facility owned or operated by Telstra, and
 - (3) apart from this provision, the agreement would result in the NBN corporation being the operator or controller of the Eligible Facility.

- 3 Section 1.2.1 (note)**
After “note”, insert “1”.

- 4 At the end of section 1.2.1**
Add:
Note 2: see Subclauses 33(8), 34(8) and 35(8) of Part 5 of Schedule 1 to the *Telecommunications Act 1997*.

- 5 Section 1.2.3**
Repeal the section.

- 6 Subparagraph 2.1(3)(a)**
Omit “ACA”, substitute “ACMA”.

- 7 Subparagraph 2.1(4)(g)**
Omit “ACA”, substitute “ACMA”.

- 8 Subsection 2.4(1)**
Omit “, including inter-party dispute resolution”.

- 9 Subsection 2.4(1) (note)**
Repeal the note.

- 10 Subsection 2.4(5)**
Omit “ACA”, substitute “ACMA”.
- 11 After subsection 2.5(3)**
Insert:
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.

(2) Carriers must engage in dispute resolution, as set out in Chapter 2 of the main Code, if agreement cannot be reached on amended timeframes
- 12 Subsection 4.4(1)**
After “Work”, insert “(MRW)”.
- 13 Subsection 4.5(7)**
Omit “4.4”, substitute “4.5”.
- 14 Subsection 5.6(3)**
Omit “liasing”, substitute “liaising”.
- 15 Paragraph 5.8(4)(g)**
Repeal the paragraph, substitute:
(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):
(i) becomes bankrupt;
(ii) signs an authority under section 188;
(iii) commits any of the acts of bankruptcy specified in section 40; or
(iv) presents a debt agreement or personal insolvency agreement; or
- 16 Paragraph 5.8(4)(o)**
Omit “reasonable”, substitute “reasonably”.
- 17 Section 6.1**
Insert:
Act refers to the *Telecommunications Act 1997* (Cth)
- 18 Section 6.1 (definition of ACA)**
Repeal the definition.

19 Section 6.1

Insert:

ACMA refers to the Australian Communications and Media Authority.

20 Section 6.1 (at the end of the definition of *Confidential Information*)

Add:

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:

- (a) 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
- (b) 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)

21 Section 6.1

Insert:

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

22 Section 6.1 (definition of *Eligible Facility*)

(a) After “respectively of Part 5”, insert “of Schedule 1 to the *Telecommunications Act 1997*”.

(b) Before “or intended to be used”, insert “installed ready to be used, ”.

23 Section 6.1

Insert:

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

24 Section 6.1

Insert:

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.

25 Section 6.1

Insert:

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).

26 Section 6.1

Insert:

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

27 Section 6.1 (definition of *Potential Second Carriers*)

Before “Minister”, insert “relevant”.

28 Section 6.1 (definition of *Potential Second Carriers*)

Omit “Communications, Information Technology and the Arts”.

29 Section 6.1 (definition of PMTS)

Omit “telephone”, substitute “telecommunications”.

30 Section 6.1

Insert:

Sharing Proposal means a proposal as defined by sub-clause 4.5(4) of this Code.

31 Section 6.1 (definition of TAF)

Repeal the definition.

32 Section 6.1

Insert:

Telstra means Telstra Corporation Limited (ABN 33 051 775 556)

33 Section 6.1 (definition of TPA)

Repeal the definition.

34 Part 1(heading) of Annexure A

Note: The heading to Part 1 of Annexure A is altered by omitting “Assesment” and substituting “Assessment”.

35 Subsection 1.1(1) of Annexure A

Omit “ACA”, substitute “ACCC”

36 At the end of subsection 1.1(1) of Annexure A

Add “to the *Telecommunications Act 1997*”.

37 Subsections 2.3(2) and (3) of Annexure A

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

- 38 Subsection 4(4) of Schedule A1**
Omit “unforseen”, substitute “unforeseen”
- 39 Part 1 (heading) of Annexure B**
Note: The heading to Part 1 of Annexure B is altered by omitting “Assesment” and substituting “Assessment”.
- 40 Subsection 1.1(1) of Annexure B**
Omit “ACA”, substitute “ACCC”
- 41 At the end of subsection 1.1(1) of Annexure B**
Add “to the *Telecommunications Act 1997*”.
- 42 Subsection 1.1(4) of Annexure B**
Omit “Facilities” (wherever occurring), substitute “facilities”.
- 43 Subsections 2.3(2) and (3) of Annexure B**
Omit “ACA” (wherever occurring), substitute “ACCC”.