

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Communications and the Arts

Telecommunications Act 1997

Telecommunications Code of Practice 1997

Divisions 2, 3 and 4 of Part 1 of Schedule 3 to the *Telecommunications Act 1997* (the Act) provide authority for carriers to inspect land, maintain facilities, connect subscribers to an existing network or install any declared 'low-impact facilities' or temporary defence facilities. Under Division 7, such activities can be conducted with exemption from certain types of State and Territory laws.

Division 5 sets out the conditions under which these activities are to be conducted. Clause 15 of that Division provides that the Minister for Communications and the Arts may, by written 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 in Division 2, 3, or 4 (other than activities covered by a facility installation permit). Subclause 15(2) of Schedule 3 to the Act requires that a carrier comply with the Code of Practice.

The Minister for Communications and the Arts made the Telecommunications Code of Practice 1997 (the Code) on 29 June 1997, and this instrument came into effect on 1 July 1997. The Telecommunications Code of Practice 1997 replaces the Telecommunications National Code 1996 and the Land Access Code 1996 which ceased on 30 June 1997.

Relationship to the Telecommunications (Low-Impact Facilities) Determination 1997

Subclause 6(3) of Schedule 3 to the Act provides that the Minister for Communications and the Arts may determine that a specified facility is a low-impact facility for the purposes of that clause. The Minister for Communications and the Arts made the Telecommunications (Low-impact Facilities) Determination 1997 on 29 June 1997 which came into effect on 1 July 1997.

Installation of these low-impact facilities are regulated under Chapter 4 of the Code.

Overview of the Telecommunications Code of Practice 1997

The Code of Practice has been divided into 6 chapters. These have been designed as far as possible to form self-contained “modules” which specify all of the rules applying to the relevant activity. There is a preliminary chapter and then a chapter for each of the 5 categories of inspection, subscriber connection, low-impact facilities, temporary Defence facilities and maintenance.

Each of the 5 main chapters has common sections on:

- . carrier conduct (Parts 2 and 3);
- . notification to the Nature Conservation Director, Heritage Chairperson and Environment Secretary (Part 4 except for Subscriber connection where it is Part 6);
- . notification to landowner and occupier (Part 5, except for Subscriber connection where it is Part 7).

Chapter 3, Subscriber connection, has additional provisions relating to options for installing subscriber connections underground (Parts 4 and 5). Notification provisions for Temporary Defence Facilities have been modified to reflect the national security requirement of these facilities and the special agreements that already exist between the Department of Defence and the Department of Environment, Sport and Territories.

In each Chapter, Part 2 repeats (for ease of reader reference) relevant general conduct provisions, from Part 1 of Schedule 3 to the Act. The main features of Part 2 of the Code are:

- . carriers are required to do as little damage as practicable and undertake restoration of land;
- . carriers are to comply with relevant industry standards and international agreements;
- . carriers are to maintain records;
- . carriers must take all reasonable steps to co-locate and co-operate with other carriers and public utilities for installation activities.

The main features of the notification to the Nature Conservation Director, Heritage Chairperson and Environment Secretary section are:

- . the carriers must notify the Nature Conservation Director, Heritage Chairperson and Environment Secretary at least 10 days before the commencement of an activity where it is to be undertaken on, or have an effect on, a designated area;
- . the Environment Secretary may issue an interim notice requiring the carrier not to engage in the activity and can then issue a final notice rejecting the activity within a reasonable time.

The main features of the notification to landowner and occupier section are:

- . the carriers must notify landowners and occupiers at least 10 business days before engaging in an activity (for low-impact facilities, managers of public land are treated as a landowner or occupier and must also be notified);
- . the landowner or occupier has the opportunity to object to the activity and the carrier is required to resolve the objection by agreement;
- . if there is an objection, then the objection can be referred to the Telecommunications Industry Ombudsmen.

Detailed notes on the Telecommunications Code of Practice 1997

CHAPTER 1 - PRELIMINARY

This Part deals with the title, background, definitions and notification procedures.

Clause 1.1: Citation

This provides that the Code may be referred to as the Telecommunications Code of Practice 1997.

Clause 1.2: Commencement

The Code commences on 1 July 1997.

Clause 1.3: Definitions - the dictionary

This explains how particular words and expressions are used in the Code. Certain words are defined in the dictionary in the Schedule at the end of the Code. The dictionary also includes words and expressions relevant to the *Telecommunications Act 1997* and other Acts as indicated.

Some key definitions are:

facility means:

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

installation, in relation to a facility, includes:

- (a) the construction of the facility on, over or under any land; and
- (b) the attachment of the facility to any building or other structure; and

- (c) any activity that is ancillary or incidental to the installation of the facility (for this purpose, **installation** includes an activity covered by paragraph (a) or (b)).

land entry activity *see section 2.2*.

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

maintenance activity *see section 6.2*.

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

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

Clause 1.4: Notification procedures

This clause sets out some key notification procedures carriers are to follow to when notifying owners and occupiers and the Nature Conservation Director, Heritage Chairperson and Environment Secretary. The procedures require that the notification periods commence on the second business day after posting, that the notice left at a place of residence is taken to have been given on the second business day after it was left at the residence and that notices required under the Code can be combined.

CHAPTER 2 - INSPECTION OF LAND

Part 1 - Introduction

Clause 2.1: Purpose of Chapter 2

Subclause 2.1 (1) requires the carrier to abide by the conditions specified in Part 1 of Schedule 3 of the Act, other regulations and the conditions set out in this Code before engaging in a land entry activity and while engaging in that activity.

Subclauses 2.1(2) and 2.1(3) identify Part 2 and Division 2 of Part 5 of Chapter 2 of this Code as carrier conditions from the Act and Parts 3 and 4, and the other Divisions of Part 5 of Chapter 2, as the Code conditions.

Clause 2.2: Land Entry Activity

Subclauses 2.2(1) and 2.2(2) provide that a *land entry activity* will include any of the following carrier activities:

- . entering or inspecting land to determine whether it is suitable for the carrier's desired purpose;
- . do anything on that land that is desirable for that purpose.

This clause provides a definition for land entry activity that is used throughout the Code.

Part 2 - Conditions in the Act for carrier conduct

Part 2 of Chapter 2 contains provisions contained in the Act and is provided for information only to provide the reader with a comprehensive reference to obligations within the Code.

Clause 2.3: Carrier to do as little damage as practicable

This clause provides that, in carrying out an authorised activity, a carrier must take all reasonable steps to ensure that it causes as little detriment, inconvenience and damage as is practicable. This is a restatement of clause 8 of Schedule 3 to the Act and continues the obligation set out s.134(1) of the *Telecommunications Act 1991*.

Clause 2.4: Carrier to restore land

This clause provides that a carrier must take all reasonable steps to ensure that the land is restored to its previous condition and that restoration begin within 10 days of completion of the activity. Subclause 2.4(3) provides that the carrier, owner and occupier can agree to commence restoration at a later time. This is a restatement of clause 9 of Schedule 3 to the Act.

Clause 2.5: Management of activities

This clause requires a carrier, in carrying out an authorised activity, to take all reasonable steps to act in accordance with good engineering practice, to protect the safety of persons and property and to ensure that the activity interferes as little as practicable with various activities specified in the clause. This is a restatement of clause 10 of Schedule 3 to the Act and continues the requirements set out in the Telecommunications National Code 1996.

Clause 2.6: Agreements with public utilities

This clause requires a carrier to make reasonable efforts to enter into an agreement with a public utility ('public utility' is defined in the dictionary and this definition is based on the definition in clause 2 of Schedule 3 to the Act) about the manner in which the carrier will engage in an authorised activity that is likely to affect the operations of the utility. A carrier must comply with such an agreement. This is a restatement of clause 11 of Schedule 3 to the Act and continues the requirements set out for carriers by the Telecommunications National Code 1996.

Clause 2.7: Compliance with industry standards

This clause requires a carrier which engages in an authorised activity to do so in accordance with any relevant industry standard recognised by the Australian Communications Authority (ACA) that is likely to reduce a risk to the safety of the public. This clause is a restatement of clause 12 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

This clause deals primarily with safety standards but is related to the more general requirement for compliance with standards and codes in clause 2.13.

Clause 2.8: Compliance with listed international agreements

This clause requires that a carrier which engages in an authorised activity must do so in a manner that is consistent with Australia's obligations under an international agreement prescribed by regulations that is relevant to that activity. This clause is a restatement of clause 13 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

Clause 2.9: Notice to roads authorities, utilities etc

This clause requires a carrier to give notice of any intention to affect existing infrastructure, as specified in clause 19(1) of Schedule 3 to the Act, before carrying out an activity authorised under Division 3 or 4 of Part 1 of Schedule 3. Under clause 19(1), this notice must be given at least 10 business days before engaging in the activity. The notice must be given to the person or authority responsible for the care and management of the relevant existing infrastructure. This provision is based on s.129(5) of the *Telecommunications Act 1991*.

Subsection 2.9(2) notes that the requirement to give notice may be waived and does not apply to emergency maintenance in the circumstances set out in clause 19(3) of Schedule 3 to the Act.

Clause 2.10: Records for certain facilities

This clause requires a carrier who owns or operates a designated overhead line, telecommunications transmission tower or underground facilities to keep and maintain accurate records of the kind and location of those facilities and, where the facility is an eligible underground facility, its capacity to hold further lines.

Part 3 - Additional carrier conditions

Part 3 of Chapter 2 of the Code contains additional carrier conditions which continue or enhance requirements set out in the Telecommunications National Code 1996 and the Land Access Code 1996.

Clause 2.11: Best practice

This clause requires that a carrier must ensure when designing and planning its deployment of facilities, taking into consideration its existing network structure, that it conforms with best practice. *Best practice* is defined as being the practice set out in an industry code or standard registered or made by the ACA. Where there is no code or standard in force, best practice is the use of design, planning and location practices that minimise the potential degradation of the environment and visual amenity associated with facilities. This clause is an enhancement of the requirements set out under subclause 28(3) of the Telecommunications National Code 1996.

Clause 2.12: Noise

This clause requires that where a carrier engages in a land entry activity between 10 pm and 7 am that the carrier must not exceed noise levels specified under a relevant State or Territory law. Where there is no State or Territory law, a carrier is not to make noise that is at a level that would be audible by a person who is, or is likely to be, in a residence or business premises near the location of the activity. These noise levels can only be exceeded by the carrier through an agreement with the relevant local government authority.

This clause is an enhancement of the requirements set out under subclause 28(4) of the Telecommunications National Code 1996.

Clause 2.13: Compliance with standards and codes

This clause complements clause 2.7 (which deals with safety issues) and clause 2.11 (which deals with “best practice”) in requiring adherence to all standards and codes under Part 6 of the Act. It is anticipated that carriers will actively pursue the development of such standards and codes using the mechanisms available in Part 6.

Part 4 - Nature Conservation Director, Heritage Chairperson and Environment Secretary

Division 1 - Purpose of Part 4

Clause 2.14: Purpose

Subclause 2.14(1) is provided for information and notes that the obligations in the Act require the Environment Secretary to be notified where a carrier proposes to install a facility before 1 January 1999, if the installation is not authorised and there are special Commonwealth environment or heritage concerns. Subclause 2.14(2) restates that where a land entry activity involves installation of a facility (eg a radiocommunications antenna) then it must comply with clause 55 of Schedule 3 to the Act. Subclause 2.14(3) is the main operative provision which provides that Divisions 2 and 3 of Part 4 of the Code (dealing with notification to the Nature Conservation Director, Heritage Chairperson, and Environment Secretary) apply only to land entry activities other than installation.

Division 2 - Notification requirements

Clause 2.15: Notice to Nature Conservation Director

This clause requires the carrier to give written notice of a proposed land entry activity in an area, for which the Nature Conservation Director is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. ("Nature Conservation Director" is defined in the dictionary to mean the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*).

Clause 2.16: Notice to Heritage Chairperson

This clause requires the carrier to give written notice of a proposed land entry activity in an area, for which the Heritage Chairperson is responsible, at least 10 business days before commencement. The carrier and Chairperson can enter into written alternative arrangements. ("Heritage Chairperson" is defined in the dictionary to mean the Chairperson of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*).

Clause 2.17: Notice to Environment Secretary

This clause requires the carrier to give written notice to the Environment Secretary of a proposed land entry activity in specified areas (as defined in clause 55(2)(a), 55(2)(b) and 55(2)(c) of Schedule 3 to the Act) at least 10 business days before commencement. The carrier and Environment Secretary can enter into written alternative arrangements. ("Environment Secretary" is defined in the dictionary to mean the Secretary to the Department responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*, currently the Secretary of the Department of Environment, Sport and Territories).

When notifying the Secretary, the carrier must advise the Secretary of any agreement with the Nature Conservation Director or Heritage Chairperson and provide the Secretary with a copy of any notification that has been given under this agreement.

Clause 2.18: Notification agreements

This clause requires that the carrier must give a copy of any agreements entered into with the Nature Conservation Director, Heritage Chairperson and Environment Secretary to the ACA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which clause 2.18 refers can be very broad and, in effect, replace the notification objections in Part 4 with alternative arrangements agreeable to the carrier and the relevant environment authority.

Division 3 - Response by Environment Secretary

Clause 2.19: Interim notice stopping land entry activity

The Environment Secretary may issue an interim notice to the carrier requiring the carrier not to engage in a land entry activity. The notice must invite the carrier to give the Secretary information to allow for the Secretary to consider a final notice under section 2.20.

Clause 2.20: Final Notice

Where the Environment Secretary has issued an interim notice, the Secretary must within a reasonable time give the carrier a final notice which confirms, revokes or revokes with conditions the interim notice. The carrier must comply with any conditions imposed by the Secretary.

In issuing the final notice, the Secretary can take into account any issue, but must give consideration to the impact of the activity on the environment (including heritage and cultural values) and the impact on the activity of the carrier and customers of the carrier.

Part 5 - General notification arrangements and objections to land entry activities

Part 5 of Chapter 2 sets out the rights of owners and occupiers of land and the obligations on carriers to give notice in relation to a land entry activity. It also includes provisions for the owner and occupier to object to the carriers proposed activity and, where the objection is not resolved, the carrier is required to refer the matter to the Telecommunications Industry Ombudsman if the objector asks the carrier to do so.

The provisions in the Code necessarily build on the obligations imposed by the Act.

The key elements of the notification and objection process are:

- . the carrier is required to notify owners and occupiers about its proposed land entry activities in advance (either 10 business days or 2 business days depending on the type of activity) of commencing;

- . the owner or occupier has the right to object in writing to the carrier within a certain period;
- . the carrier is required to attempt to resolve the objection to the owner or occupier's satisfaction within 20 business days of receiving the objection;
- . if there is no resolution, the owner can require the carrier to refer the issue to the Telecommunications Industry Ombudsman.

Division 1 - Introduction

Clause 2.21: Purpose of Part 5

Subclause 2.21(1) notes the requirement in clause 17 of Schedule 3 to the Act which requires that, before engaging in an authorised activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. Clause 17 provides that notice of at least 2 business days is sufficient simply to inspect land which is not in an environmentally sensitive area (see clause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in clause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see clause 17(6)).

Subclause 2.21(2) notes the requirement under clause 54 of Schedule 3 to the Act which sets out a procedure that a carrier may follow if unable to identify the owner or occupier of the land who must be given notice as provided for in Division 5 of Part 1 of Schedule 3. The clause provides for alternative arrangements in those circumstances. It is based on s.135 of the *Telecommunications Act 1991*.

Subclause 2.21(3) notes that Division 2 of Part 5 sets out, in a simplified form, the notification requirements of clauses 17 and 54 of Schedule 3.

Subclause 2.21(4) notes that Divisions 3 to 5 of Part 5 set out additional arrangements for notification, and arrangements for the owner or occupier to object to the activity. These objection procedures are modelled on the notification procedures in the Land Access Code 1996.

Clause 2.22: Application of Division 3, 4 and 5 of Part 5

This clause notes that Divisions 3, 4 and 5 of Part 5 do not apply to a land entry activity if the carrier is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land.

Division 2 - Notification requirements of Clauses 17 and 54 of Schedule 3

Clause 2.23: Notice to owner and occupier of land

This clause requires that, before engaging in an authorised activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. In accordance with clause 17 of Schedule 3 to the Act, clause 2.23 provides that written notice of at least 2 business days is sufficient simply to inspect land which is not in an

environmentally sensitive area and does not involve any material disturbance to the land. In all other cases the carrier is required to give at least 10 business days written notice of its intention.

The notice must specify the purpose of the land entry activity and specify that if a person suffers loss or damage to property because of the carrier's actions, compensation may be payable under clause 42 of Schedule 3 to the Act. The clause notes that the carrier is not required to give notice if it is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land or the activity is on public land that is not a sensitive area and no material disturbance to the land is involved (subclauses 17(5) to (7) of Schedule 3 to the Act).

Clause 2.24: Serving notices if owner unknown

This clause sets out a procedure that a carrier may follow if unable to identify the owner of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Clause 2.25: Serving notices if occupier unknown

This clause sets out a procedure that a carrier may follow if unable to identify the occupier of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Division 3 - Additional notification arrangements

Clause 2.26: Notice to owner and occupier of land: additional requirements

This clause requires that the notice to the owner must include details of the actions the carrier expects to take as part of the land entry activity and details on the arrangements for owners and occupiers of land to make objections. Where the Telecommunications Industry Ombudsman has issued a document setting out how the carrier is to explain these arrangements, then the carrier must comply with this document.

Clause 2.27: Agreement on alternative notification arrangements

A carrier and owner or occupier of land may agree in writing to alternative notification arrangements.

Clause 2.28: Additional arrangements for serving notices

Where the carrier has been unable to give the occupier a notice about the activity, either personally or by post and the owner and occupier is unknown, the carrier must attach a copy of a notice, to a conspicuous part of the land, stating the date that the activity commenced and a description of the activity.

Division 4 - Objections made to carrier

Clause 2.29: Objection to land activity

This clause gives a person who has been notified by the carrier the right to object in writing about how a carrier intends to exercise its power. The objection must give reasons for the objections in accordance with clause 2.30.

Clause 2.30: Reasons for objection

This clause sets out reasons for the objections. These may relate to all or any of the following matters:

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

Clause 2.31: Time for giving objection to carrier

In accordance with clause 17 of Schedule 3 to the Act, clause 2.23 provides that written notice of at least 2 business days is sufficient simply to inspect land which is not in an environmentally sensitive area and does not involve any material disturbance to the land. In all other cases the carrier is required to give at least 10 business days written notice of its intention.

This clause maximises the period available for the objections by setting 1 business day for activity that is not in environmentally sensitive areas and does not involve material disturbance of land, and 9 business days in other instances, as the period within which written objections can be lodged.

Clause 2.32: Activity after objection

This clause in effect provides the "stop" mechanism following lodgement of an objection. It provides that if the objection complies with the requirements of the Code the carrier can only engage in the land entry activity if:

- . the objection is resolved by agreement between carrier and objector; or
- . the matter is not referred to the Telecommunications Industry Ombudsman, in accordance with clause 2.36;
- . the matter is referred to the Telecommunications Industry Ombudsman, and the Ombudsman informs the carrier in writing that it does not intend to issue a direction; or
- . the Telecommunications Industry Ombudsman gives the carrier a direction.

Clause 2.33: Consultation

This clause provides that a carrier must make reasonable efforts to consult with the objector within 5 business days of receiving the objection and to resolve the objection within 20 business days of receiving the objection.

Clause 2.32 allows for the carrier and objector to come to an agreement and the carrier must comply with that agreement.

Clause 2.34: Changes to land entry activity

This clause requires the carrier to consider changing the land entry activity if the objection is not resolved within 20 business days. The carrier is not required to change the activity if the change is not economically feasible or technically practicable, or where the change has a greater adverse effect on the environment or is inconsistent with recognised industry standard or practice.

The carrier must advise the objector in writing within 25 days of receiving the objection of its intention to change the activity and how, or that it does not intend to change the activity and why.

Division 5 - Objections made to Telecommunications Industry Ombudsman

Clause 2.35: Application of Division 5

This clause provides that where the objection comes, in whole or part, within the jurisdiction of the Telecommunications Industry Ombudsman, the objection can be referred to the Ombudsman if there has been no resolution by agreement between the carrier and objector and the objector is not satisfied with the carrier's response.

Clause 2.36: Request to refer objection to the Telecommunications Industry Ombudsman

This clause provides that the objector can require the carrier to refer the objection to the Telecommunications Industry Ombudsman by making a written request to the carrier within 9 business days of receiving the carrier's response to the objection.

Clause 2.37: Compliance with directions of Telecommunications Industry Ombudsman

This clause requires the carrier to abide by a direction of the Telecommunications Industry Ombudsman.

CHAPTER 3 - SUBSCRIBER CONNECTION

Part 1 - Introduction

Clause 3.1: Purpose of Chapter 3

Subclause 3.1 (1) requires the carrier to abide by the conditions specified in Part 1 of Schedule 3 to the Act, other regulations and the conditions set out in the Code before engaging in a subscriber connection activity and while engaging in that activity.

Subclauses 3.1(2) and 3.1(3) identify Part 2 and Division 2 of Part 7 of Chapter 3 of this Code as carrier conditions from the Act and Parts 3 to 6, and the other Divisions of Part 7 of Chapter 3, as the Code conditions.

Clause 3.2: Subscriber connection activity

This clause defines a *subscriber connection activity* as carrying out any activity involved in the connection of a subscriber. Subscriber connections include all forms of telecommunications services delivered by a line such as the telephone and pay television services.

Part 2 - Conditions in the Act for carrier conduct

Part 2 of Chapter 3 outlines provisions contained in the Act and is provided for information only to provide the reader with a comprehensive reference to obligations within the Code.

Clause 3.3: Carrier to do as little damage as practicable

This clause provides that, in carrying out an authorised *subscriber connection activity*, a carrier must take all reasonable steps to ensure that it causes as little detriment, inconvenience and damage as is practicable. This is a restatement of clause 8 of Schedule 3 to the Act and continues the obligation set out s.134(1) of the *Telecommunications Act 1991*.

Clause 3.4: Carrier to restore land

This clause provides that a carrier must take all reasonable steps to ensure that the land is restored to its previous condition and that restoration begins within 10 business days of completion of the *subscriber connection activity*. Subclause 3.4(3) provides that the carrier, owner and occupier can agree to commence restoration at a later time. This is a restatement of clause 9 of Schedule 3 to the Act.

Clause 3.5: Management of activities

This clause requires a carrier, in carrying out an authorised *subscriber connection activity*, to take all reasonable steps to act in accordance with good engineering practice, to protect the safety of persons and property and to ensure that the activity interferes as little as practicable with various activities specified in the clause. This is a restatement of clause 10 of Schedule

3 to the Act and continues the requirements set out in the Telecommunications National Code 1996.

Clause 3.6: Agreements with public utilities

This clause requires a carrier to make reasonable efforts to enter into an agreement with a public utility ('public utility' is defined in the dictionary and this definition is based on the definition in clause 2 of Schedule 3 to the Act) about the manner in which the carrier will engage in an authorised *subscriber connection activity* that is likely to affect the operations of the utility. A carrier must comply with such an agreement. This is a restatement of clause 11 of Schedule 3 to the Act and continues the requirements imposed on carriers by the Telecommunications National Code 1996.

Clause 3.7: Compliance with industry standards

This clause requires a carrier which engages in an authorised *subscriber connection activity* to do so in accordance with any relevant industry standard recognised by the ACA that is likely to reduce a risk to the safety of the public. This clause is a restatement of clause 12 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

This clause deals primarily with safety standards but is related to the more general requirement for compliance with standards and codes in clause 3.15.

Clause 3.8: Compliance with listed international agreements

This clause requires that a carrier which engages in an authorised *subscriber connection activity* must do so in a manner that is consistent with Australia's obligations under an international agreement prescribed by regulations that is relevant to that activity. This clause is a restatement of clause 13 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

Clause 3.9: Notice to roads authorities, utilities etc

This clause requires a carrier to give notice of any intention to affect existing infrastructure, as specified in clause 19(1) of Schedule 3 to the Act, before carrying out a *subscriber connection activity* authorised under Division 3 or 4 of Part 1 of Schedule 3. Under clause 19(1), this notice must be given at least 10 business days before engaging in the *subscriber connection activity*. The notice must be given to the person or authority responsible for the care and management of the relevant existing infrastructure. This provision is based on s.129(5) of the *Telecommunications Act 1991*.

Subsection 3.9(2) notes that the requirement to give notice may be waived and does not apply to emergency maintenance in the circumstances set out in clause 19(3).

Clause 3.10: Records for certain facilities

This clause requires a carrier who owns or operates a designated overhead line, telecommunications transmission tower or underground facilities to keep and maintain accurate records of the kind and location of those facilities and, where the facility is an eligible underground facility, its capacity to hold further lines.

Part 3 - Additional carrier conditions

Part 3 of Chapter 3 of the Code contains additional carrier conditions which continue or enhance requirements set out in the Telecommunications National Code 1996 and the Land Access Code 1996.

Clause 3.11: Best practice

This clause requires that a carrier must ensure when designing and planning its deployment of facilities, taking into consideration its existing network structure, that it conforms with best practice. *Best practice* is defined as being the practice set out in an industry code or standard registered or made by the ACA. Where there is no code or standard in force, best practice is the use of design, planning and location practices that minimise the potential degradation of the environment and visual amenity associated with facilities. This clause is an enhancement of the obligation under subclause 28(3) of the Telecommunications National Code 1996.

Clause 3.12: Noise

This clause requires that where a carrier engages in a subscriber connection entry activity between 10 pm and 7 am that the carrier must not exceed noise levels specified under a relevant State or Territory law. Where there is no State or Territory law, a carrier is not to make noise that is at a level that would be audible by a person who is, or is likely to be, in a residence or business premises near the location of the activity. These noise levels can only be exceeded by the carrier through an agreement with the relevant local government authority.

This clause is an enhancement of the requirements set out under subclause 28(4) of the Telecommunications National Code 1996.

Clause 3.13: Co-location

This clause requires, that before engaging in a subscriber connection activity, carriers take all reasonable steps to co-locate their facilities with other telecommunications facilities and/or public utility installations.

Subclause 3.13(1) requires carriers to take all reasonable steps to find out whether telecommunications facilities, public utility installations or an easement is available for the activity. Subclause 3.13(2) requires carriers to take all reasonable steps to use existing facilities for the activity.

Clause 3.14: Cooperation about activities

This clause requires, that before engaging in a subscriber connection activity, carriers must to find out whether another carrier or public utility is engaging or proposing to engage in a similar activity and seek to work with the other carrier or utility to minimise disturbance and damage.

Clause 3.15: Compliance with standards and codes

This clause complements clause 3.7 (which deals with safety issues) and clause 3.11 (which deals with “best practice”) in requiring adherence to all standards and codes under Part 6 of the Act. It is anticipated that carriers will actively pursue the development of such standards and codes using the mechanisms available in Part 6.

Clause 3.16: Height of subscriber connections

Clause 3.16 requires carriers to comply with existing standards and codes for minimum height requirements for subscriber cables. Where there are no existing standards and codes the minimum height requirement is:

- . 2.4 metres in an area where there is no vehicle traffic;
- . 3.7 metres for a driveway not normally used by a vehicle regarded as a tall commercial vehicle;
- . 4.9 metres for any other area in which there is vehicle traffic.

These measurements are derived from an Australian Communications Authority standard for the connection of customer cabling (Technical Standard TS 009).

Part 4 - Installing a subscriber connection underground: no third parties

Clause 3.17: Application of Part 4

This clause states that this Part of Chapter 3 applies where a carrier intends to connect a subscriber to its network using aerial cabling and where the connection crosses only the subscriber’s or the carrier’s land.

Clause 3.18: Offer to install subscriber connection underground

Subclause 3.18(1) requires that the carrier must offer to install a subscriber connection underground if the subscriber agrees to pay for it. The carrier must also offer to give the subscriber an indicative price or quote for underground installation in accordance with clauses 3.19 and 3.20.

Subclause 3.18(2) provides that the carrier must only make the offer in writing if the subscriber requests it.

Subclause 3.18(3) requires that a carrier must advise the subscriber in the offer to underground cable of any proposal by a local government authority for paying any of the cost of a subscriber connection activity.

3.19: Indicative price

This clause provides that, if requested to do so by the subscriber, the carrier will provide an indicative price to the subscriber for underground installation, based on the carrier's estimate of the average difference in cost between aerial and underground installation. The carrier is only required to provide a written estimate of the price if requested by the subscriber.

3.20: Installation quote

This clause provides that, if requested to do so by the subscriber, the carrier will provide a quote to the subscriber for underground installation, based on the carrier's estimate of the average difference in cost between aerial and underground installation. The quote may also specify the way in which the underground installation would be carried out. The carrier is only required to provide a written quote if requested by the subscriber.

3.21: Aerial or underground connection

Subclause 3.21(1) provides that if the subscriber accepts the carrier's quote, the carrier must install the subscriber connection underground.

Subclause 3.21(2) provides that aerial cabling is allowed where the subscriber agrees.

Subclause 3.21(3) provides that aerial cabling is also allowed where the subscriber:

- . refuses to accept the carrier's quote; or
- . does not accept the quote in writing within 10 business days of receiving the quote.

Part 5 - Installing a subscriber connection underground: third parties

Clause 3.22: Application of Part 5

This clause states that this Part of Chapter 3 applies where a carrier intends to connect a subscriber to its network using aerial cabling and where the connection crosses land owned by a person other than the subscriber or the carrier (ie a third party).

Clause 3.23: Offer to install subscriber connection underground

Subclause 3.23(1) requires that the carrier must offer to install a subscriber connection underground if the subscriber agrees to pay for underground installation for all the land affected by the installation (ie including third party land). The carrier must also offer to give the subscriber an indicative price or quote for underground installation in accordance with clauses 3.24 and 3.25.

Subclause 3.23(2) provides that the carrier must only make the offer in writing if the subscriber requests it.

Subclause 3.23(3) requires that a carrier, if requested to do so by the subscriber, must advise the subscriber in the offer to underground cable of any proposal by a local government authority for paying any of the cost of a subscriber connection activity.

3.24: Indicative price to subscriber

This clause provides that the carrier, if requested to do so by the subscriber, will provide an indicative price to the subscriber for underground installation for all land (ie including third party land), based on the carrier's estimate of the average difference in cost between aerial and underground installation. The carrier is only required to provide a written estimate of the price if requested by the subscriber.

3.25: Installation quote to subscriber

This clause provides that the carrier, if requested to do so by the subscriber, will provide a quote to the subscriber for underground installation, based on the carrier's estimate of the average difference in cost between aerial and underground installation for all land (ie including third party land). The quote may also specify the way in which the underground installation would be carried out. The carrier is only required to provide a written quote if requested by the subscriber.

3.26: Offer to third party

This clause applies only if the subscriber refuses in writing to accept the carrier's quote or does not agree to accept the quote in writing within 10 business days after the subscriber received the quote.

Given that the subscriber has refused to pay for underground installation of the subscriber connection, subclause 3.26(2) requires the carrier to offer the third party the option to pay for undergrounding of the connection through their land.

Subclauses 3.26(3) and 3.26(4) provides that the carrier is required to provide the offer in writing if requested by the third party and the carrier must advise the third party of any local government authority proposals for paying any of the cost of a subscriber connection activity.

Clause 3.27: Indicative price to third party

This clause provides that the carrier, if requested to do so by the third party, will provide an indicative price in writing to the third party for underground installation for their land, based on the carrier's estimate of the average difference in cost between aerial and underground installation.

Clause 3.28: Installation quote to third party

This clause provides that the carrier, if requested to do so by the third party, will provide a written quote to the third party for underground installation for their land, based on the carrier's estimate of the average difference in cost between aerial and underground

installation. The quote may also specify the way in which the underground installation would be carried out.

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

Subclause 3.29(1) provides that if the subscriber accepts the carrier's quote, the carrier must install the subscriber connection under the subscriber's land.

Subclause 3.29(2) provides that aerial cabling is allowed where the subscriber:

- . refuses to accept the carrier's quote; or
- . does not accept the quote in writing within 10 business days of receiving the quote.

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

Subclause 3.30(1) provides that if the subscriber accepts the carrier's quote, the carrier must install the subscriber connection underground for each third party's land.

Subclause 3.30(2) provides that if the third party accepts the carrier's quote, the carrier must install the subscriber connection underground for the third party's land.

Subclause 3.30(3) provides that aerial cabling is allowed where the third party agrees.

Subclause 3.30(4) provides that if the subscriber and the third party do not accept the carrier's quote or do not respond in writing within 10 business days, the carrier is not required to install the connection under the third party's land.

Part 6 - Nature Conservation Director, Heritage Chairperson and Environment Secretary

Clause 3.31: Notice to Nature Conservation Director

This clause requires the carrier to give written notice of a proposed *subscriber connection activity* in an area, for which the Nature Conservation Director is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. ("Nature Conservation Director" is defined in the dictionary to mean the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*).

Clause 3.32: Notice to Heritage Chairperson

This clause requires the carrier to give written notice of a proposed *subscriber connection activity* in an area, for which the Heritage Chairperson is responsible, at least 10 business days before commencement. The carrier and Chairperson can enter into written alternative arrangements. ("Heritage Chairperson" is defined in the dictionary to mean the Chairperson of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*).

Clause 3.33: Notice to Environment Secretary

This clause requires the carrier to give written notice to the Environment Secretary of a proposed *subscriber connection activity* in specified areas (as defined in clause 55(2)(a), 55(2)(b) and 55(2)(c) of Schedule 3 to the Act) at least 10 business days before commencement. The carrier and the Environment Secretary can enter into written alternative arrangements. (“Environment Secretary” is defined in the dictionary to mean the Secretary to the Department responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*, currently the Secretary of the Department of Environment, Sport and Territories).

When notifying the Secretary, the carrier must advise the Secretary of any agreement with the Nature Conservation Director or Heritage Chairperson and provide the Secretary with a copy of any notification that has been given under this agreement.

Clause 3.34: Notification agreements

This clause requires that the carrier must give a copy of any agreements entered into with the Nature Conservation Director, Heritage Chairperson and Environment Secretary to the ACA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which clause 3.34 refers can be very broad and, in effect, replace the notification objections in Part 6 with alternative arrangements agreeable to the carrier and the relevant environment authority.

Clause 3.35: Interim notice stopping subscriber connection activity

The Environment Secretary may issue an interim notice to the carrier requiring the carrier not to engage in a land entry activity. The notice must invite the carrier to give the Secretary information to allow for the Secretary to consider a final notice under Section 3.36.

Clause 3.36: Final notice

Where the Environment Secretary has issued an interim notice, the Secretary must within a reasonable time give the carrier a final notice which confirms, revokes or revokes with conditions the interim notice. The carrier must comply with any conditions imposed by the Secretary.

In issuing the final notice, the Secretary can take into account any issue, but must give consideration to the impact of the activity on the environment (including heritage and cultural values) and the impact on the activity of the carrier and customers of the carrier.

Part 7 - General notification arrangements

Part 7 of Chapter 3 sets out the rights of owners and occupiers of land and the obligations on carriers to give notice in relation to a land entry activity.

The provisions in the Code necessarily build on the obligations imposed by the Act.

Division 1 - Introduction

Clause 3.37: Purpose of Part 7

Subclause 3.37(1) notes the requirement in clause 17 of Schedule 3 to the Act which requires that, before engaging in a *subscriber connection activity* in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. Clause 17 provides that notice of at least 2 business days is sufficient simply to inspect land which is not in an environmentally sensitive area (see clause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in clause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see clause 17(6)).

Subclause 3.37(2) notes the requirement under clause 54 of Schedule 3 to the Act which sets out a procedure that a carrier may follow if unable to identify the owner or occupier of the land who must be given notice as provided for in Division 5 of Part 1 of Schedule 3. The clause provides for alternative arrangements in those circumstances. It is based on s.135 of the *Telecommunications Act 1991*.

Subclause 3.37(3) notes that Division 2 of Part 7 sets out, in a simplified form, the notification requirements of clauses 17 and 54 of Schedule 3.

Subclause 3.37(4) notes that Division 3 of Part 7 sets out additional arrangements for notification.

Clause 3.38: Application of Division 3 of Part 7

Subclauses 3.38 (1), 3.38 (2) and 3.38 (3) note that Division 3 of Part 7 does not apply to a *subscriber connection activity* if the carrier is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land.

Subclause 3.38(4) notes that Division 3 does not apply to a *subscriber connection activity* where the activity involves a public street, nature strip or other public land in proximity to the land that the carrier requires access to install the subscriber connection or the point at which the connection meets the telecommunications network.

Subclause 3.38(5) notes that Divisions 2 and 3 of this Part do not apply to a *subscriber connection activity* where the activity involves public land between the relevant land and the network point.

Division 2 - Notification requirements of Clauses 17 and 54 of Schedule 3

Clause 3.39: Notice to owner and occupier of land

This clause requires that, before engaging in an authorised *subscriber connection activity* in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. In accordance with clause 17 of Schedule 3 to the Act, clause 3.39 provides that the carrier is required to give at least 10 business days' written notice of its intention to engage in the subscriber connection activity.

The notice must specify the purpose of the *subscriber connection activity* and specify that if a person suffers loss or damage to property because of the carrier's actions, compensation may be payable under clause 42 of Schedule 3 to the Act. The clause notes that the carrier is not required to give notice if it is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land or the activity is on public land that is not a sensitive area and no material disturbance to the land is involved (subclauses 17(5) to (7) of Schedule 3 to the Act).

Clause 3.40: Serving notices if owner unknown

This clause sets out a procedure that a carrier may follow if unable to identify the owner of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Clause 3.41: Serving notices if occupier unknown

This clause sets out a procedure that a carrier may follow if unable to identify the occupier of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Division 3 - Additional Notification Requirements

Clause 3.42: Notice to owner and occupier of land: additional requirements

This clause requires that the notice to the owner must include details of the actions the carrier expects to take as part of the *subscriber connection activity*.

Clause 3.43: Agreement on alternative notification arrangements

A carrier and owner or occupier of land may agree in writing to alternative notification arrangements.

Clause 3.44: Additional arrangements for serving notices

Where the carrier has been unable to give the occupier a notice about the *subscriber connection activity*, either personally or by post and the owner and occupier is unknown, the carrier must attach a copy of a notice, to a conspicuous part of the land, stating the date that the activity commenced and a description of the activity.

CHAPTER 4 - LOW-IMPACT FACILITIES

Part 1 - Introduction

Clause 4.1: Purpose of Chapter 4

Subclause 4.1(1) requires the carrier to abide by the conditions specified in Part 1 of Schedule 3 to the Act, other regulations and the conditions set out in the Code before engaging in a low-impact facility activity and while engaging in that activity.

Subclauses 4.1(2) and 4.1(3) identify Part 2 and Division 2 of Part 5 Chapter 4 of this Code as carrier conditions from the Act and Parts 3 and 4, and the other Divisions of Part 5 of Chapter 4, as Code conditions.

Clause 4.2: Low-impact facility activity

This clause defines a low-impact facility activity as carrying out any activity involved in installing a low-impact facility. Low-impact facilities are specified in the Telecommunications (Low-impact Facilities) Determination 1997.

Part 2 - Conditions in the Act for carrier conduct

Part 2 of Chapter 4 outlines provisions contained in the Act and is provided for information only to provide the reader with a comprehensive reference to obligations within the Code.

Clause 4.3: Carrier to do as little damage as practicable

This clause provides that, in carrying out an authorised low-impact facility activity, a carrier must take all reasonable steps to ensure that it causes as little detriment, inconvenience and damage as is practicable. This is a restatement of clause 8 of Schedule 3 to the Act and continues the obligation set out s.134(1) of the *Telecommunications Act 1991*.

Clause 4.4: Carrier to restore land

This clause provides that a carrier must take all reasonable steps to ensure that the land is restored to its previous condition and that restoration begins within 10 business days of completion of the low-impact facility activity. Subclause 4.4(3) provides that the carrier, owner and occupier can agree to commence restoration at a later time. This is a restatement of clause 9 of Schedule 3 to the Act.

Clause 4.5: Management of activities

This clause requires a carrier, in carrying out an authorised low-impact facility activity, to take all reasonable steps to act in accordance with good engineering practice, to protect the safety of persons and property and to ensure that the activity interferes as little as practicable with various activities specified in the clause. This is a restatement of clause 10 of Schedule 3 to the Act and continues the requirements set out in the Telecommunications National Code 1996.

Clause 4.6: Agreements with public utilities

This clause requires a carrier to make reasonable efforts to enter into an agreement with a public utility ('public utility' is defined in the dictionary and this definition is based on the definition in clause 2 of Schedule 3 to the Act) about the manner in which the carrier will engage in an authorised low-impact facility activity that is likely to affect the operations of the utility. A carrier must comply with such an agreement. This is a restatement of clause 11 of Schedule 3 to the Act and continues the requirement imposed on carriers by the Telecommunications National Code 1996.

Clause 4.7: Compliance with industry standards

This clause requires a carrier which engages in an authorised low-impact facility activity to do so in accordance with any relevant industry standard recognised by the ACA that is likely to reduce a risk to the safety of the public. This clause is a restatement of clause 12 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

This clause deals primarily with safety standards but is related to the more general requirement for compliance with standards and codes in clause 4.15.

Clause 4.8: Compliance with listed international agreements

This clause requires that a carrier which engages in an authorised low-impact facility activity must do so in a manner that is consistent with Australia's obligations under an international agreement prescribed by regulations that is relevant to that activity. This clause is a restatement of clause 13 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

Clause 4.9: Notice to roads authorities, utilities etc

This clause requires a carrier to give notice of any intention to affect existing infrastructure, as specified in clause 19(1) of Schedule 3 to the Act, before carrying out an low-impact facility activity authorised under Division 3 or 4 of Part 1 of Schedule 3. Under clause 19(1), this notice must be given at least 10 business days before engaging in the activity. The notice must be given to the person or authority responsible for the care and management of the relevant existing infrastructure. This provision is based on s.129(5) of the *Telecommunications Act 1991*.

Subsection 4.9(2) notes that the requirement to give notice may be waived and does not apply to emergency maintenance in the circumstances set out in clause 19(3).

Clause 4.10: Records for certain facilities

This clause requires a carrier who owns or operates a designated overhead line, telecommunications transmission tower or underground facilities to keep and maintain accurate records of the kind and location of those facilities and, where the facility is an eligible underground facility, its capacity to hold further lines.

Part 3 - Additional carrier conditions

Part 3 of Chapter 4 contains additional carrier conditions which continue or enhance requirements set out in the Telecommunications National Code 1996 and the Land Access Code 1996.

Clause 4.11: Best practice

This clause requires that a carrier must ensure when designing and planning its deployment of low-impact facilities, taking into consideration its existing network structure, that it conforms with best practice. *Best practice* is defined as being the practice set out in an industry code or standard registered or made by the ACA. Where there is no code or standard in force, best practice is the use of design, planning and location practices that minimise the potential degradation of the environment and visual amenity associated with facilities. This clause is an enhancement of the requirements set out under subclause 28(3) of the Telecommunications National Code 1996.

Clause 4.12: Noise

This clause requires that where a carrier engages in a low-impact facility activity between 10 pm and 7 am that the carrier must not exceed noise levels specified under a relevant State or Territory law. Where there is no State or Territory law, a carrier is not to make noise that is at a level that would be audible by a person who is, or is likely to be, in a residence or business premises near the location of the activity. These noise levels can only be exceeded by the carrier through an agreement with the relevant local government authority.

This clause is an enhancement of the obligation under subclause 28(4) of the Telecommunications National Code 1996.

Clause 4.13: Co-location

This clause requires, that before engaging in a low-impact facility activity, carriers take all reasonable steps to co-locate their facilities with other telecommunications facilities and/or public utility installations.

Subclause 4.13(1) requires carriers to take all reasonable steps to find out whether telecommunications facilities, public utility installations or an easement is available for the low-impact facility activity. Subclause 4.13(2) requires carriers to take all reasonable steps to use existing facilities for the activity.

Clause 4.14: Cooperation about activities

This clause requires, that before engaging in a low-impact facility activity, carriers must to find out whether another carrier or public utility is engaging or proposing to engage in a similar activity and seek to work with the other carrier or public utility to minimise disturbance and damage.

Clause 4.15: Compliance with standards and codes

This clause complements clause 4.7 (which deals with safety issues) and clause 4.11 (which deals with “best practice”) in requiring adherence to all standards and codes under Part 6 of the Act. It is anticipated that carriers will actively pursue the development of such standards and codes using the mechanisms available in Part 6.

Part 4 - Nature Conservation Director, Heritage Chairperson and Environment Secretary

Clause 4.16: Notice to Nature Conservation Director

This clause requires the carrier to give written notice of a proposed low-impact facility *activity* in an area, for which the Nature Conservation Director is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. (“Nature Conservation Director” is defined in the dictionary to mean the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*).

Clause 4.17: Notice to Heritage Chairperson

This clause requires the carrier to give written notice of a proposed low-impact facility *activity* in an area, for which the Heritage Chairperson is responsible, at least 10 business days before commencement. The carrier and Chairperson can enter into written alternative arrangements. (“Heritage Chairperson” is defined in the dictionary to mean the Chairperson of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*).

Clause 4.18: Notice to Environment Secretary

This clause requires the carrier to give written notice to the Environment Secretary of a proposed *low-impact facility activity* in specified areas (as defined in clause 55(2)(a), 55(2)(b) and 55(2)(c) of Schedule 3 to the Act) at least 10 business days before commencement. The carrier and Secretary can enter into written alternative arrangements. (“Environment Secretary” is defined in the dictionary to mean the Secretary to the Department responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*, currently the Secretary of the Department of Environment, Sport and Territories).

When notifying the Secretary, the carrier must advise the Secretary of any agreement with the Nature Conservation Director or Heritage Chairperson and provide the Secretary with a copy of any notification that has been given under this agreement.

Clause 4.19: Notification agreements

This clause requires that the carrier must give a copy of any agreements entered into with the Nature Conservation Director, Heritage Chairperson and Environment Secretary to the ACA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which clause 4.19 refers can be very broad and, in effect, replace the notification objections in Part 4 with alternative arrangements agreeable to the carrier and the relevant environment authority.

Clause 4.20: Interim notice stopping low-impact facility activity

The Environment Secretary may issue an interim notice to the carrier requiring the carrier not to engage in a low-impact facility activity. The notice must invite the carrier to give the Secretary information to allow for the Secretary to consider a final notice under section 4.21.

Clause 4.21: Final notice

Where the Environment Secretary has issued an interim notice, the Secretary must within a reasonable time give the carrier a final notice which confirms, revokes or revokes with conditions the interim notice. The carrier must comply with any conditions imposed by the Secretary.

In issuing the final notice, the Secretary can take into account any issue, but must give consideration to the impact of the low-impact facility activity on the environment (including heritage and cultural values) and the impact on the activity of the carrier and customers of the carrier.

Part 5 - General notification arrangements and objections to low-impact activities

Part 5 of Chapter 4 sets out the rights of owners and occupiers of land and the obligations on carriers to give notice in relation to a low-impact facility activity. It also includes provisions for the owner and occupier to object to the carriers proposed low-impact facility activity and, where the objection is not resolved, the carrier is required to refer the matter to the Telecommunications Industry Ombudsman if the objector asks the carrier to do so.

The provisions in the Code necessarily build on the obligations imposed by the Act.

The key elements of the notification and objection process are:

- . the carrier is required to notify owners and occupiers about its proposed low-impact facility activities in 10 business days in advance of commencing;
- . the owner or occupier has the right to object in writing to the carrier within a certain period;
- . the carrier is required to attempt to resolve the objection to the owner or occupier's satisfaction within 20 business days of receiving the objection;
- . if there is no resolution, the owner can require the carrier to refer the issue to the Telecommunications Industry Ombudsman.

*Division 1 - Introduction***Clause 4.22: Purpose of Part 5**

Subclause 4.21(1) notes the requirement in clause 17 of Schedule 3 to the Act which requires that, before engaging in an authorised activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. Clause 17 provides that notice of at least 2 business days is sufficient simply to inspect land which is not in an environmentally sensitive area (see clause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in clause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see clause 17(6)).

Subclause 4.21(2) notes the requirement under clause 54 of Schedule 3 to the Act which sets out a procedure that a carrier may follow if unable to identify the owner or occupier of the land who must be given notice as provided for in Division 5 of Part 1 of Schedule 3. The clause provides for alternative arrangements in those circumstances. It is based on s.135 of the *Telecommunications Act 1991*.

Subclause 4.21(3) notes that Division 2 of Part 5 sets out, in a simplified form, the notification requirements of clauses 17 and 54 of Schedule 3.

Subclause 4.21(4) notes that Divisions 3 to 5 of Part 5 set out additional arrangements for notification, and arrangements for the owner or occupier to object to the low-impact facility activity. These objection procedures are modelled on the notification procedures in the Land Access Code 1996.

Clause 4.23: Application of Part 5

This clause notes that Divisions 3, 4 and 5 of Part 5 do not apply to a low-impact facility activity if the carrier is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land.

Subclause 4.23(4) provides that for this Part only, the occupier of public land is the person authorised to occupy the land or if no person is authorised, the authority, Department or person responsible for the care and management of land.

*Division 2 - Notification requirements of clauses 17 and 54 of Schedule 3***Clause 4.24: Notice to owner and occupier of land**

This clause requires that, before engaging in an authorised low-impact facility activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. In accordance with clause 17 of Schedule 3 to the Act, clause 4.24 provides that the carrier is required to give at least 10 business days' written notice of its intention to engage in the low-impact facility activity.

The notice must specify the purpose of the low-impact facility activity and specify that if a person suffers loss or damage to property because of the carrier's actions, compensation may be payable under clause 42 of Schedule 3 to the Act. The clause notes that the carrier is not required to give notice if it is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land or the activity is on public land that is not a sensitive area and no material disturbance to the land is involved (subclauses 17(5) to (7) of Schedule 3 to the Act).

Clause 4.25: Serving notices if owner unknown

This clause sets out a procedure that a carrier may follow if unable to identify the owner of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Clause 4.26: Serving notices if occupier unknown

This clause sets out a procedure that a carrier may follow if unable to identify the occupier of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Division 3 - Additional notification arrangements

Clause 4.27: Notice to owner and occupier of land: additional requirements

This clause requires that the notice to the owner must include details of the actions the carrier expects to take as part of the low-impact facility activity and details on the arrangements for owners and occupiers of land to make objections. Where the Telecommunications Industry Ombudsman has issued a document setting out how the carrier is to explain these arrangements, then the carrier must comply with this document.

Clause 4.28: Agreement on alternative notification arrangements

A carrier and owner or occupier of land or the manager of public land affected by a low-impact facility activity may agree in writing to alternative notification arrangements. The carrier must give the ACA a copy of any agreement with the manager of public land within 30 business days.

Clause 4.29: Additional arrangements for serving notices

Where the carrier has been unable to give the occupier a notice about the low-impact facility activity, either personally or by post and the owner and occupier is unknown, the carrier must attach a copy of a notice, to a conspicuous part of the land, stating the date that the activity commenced and a description of the activity.

Division 4 - Objection made to carrier

Clause 4.30: Objection to low-impact facility activity

This clause gives a person who has been notified by the carrier the right to object in writing about how a carrier intends to exercise its power. The objection must give reasons for the objections in accordance with clause 4.31.

Clause 4.31: Reasons for objection

This clause sets out reasons for the objections. These may relate to all or any of the following matters:

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

Clause 4.32: Time for giving objection to carrier

This clause provides that objections must be given at least 5 days before the carrier proposes to engage in the low-impact facility activity.

Clause 4.33: Activity after objection

This clause in effect provides the "stop" mechanism following lodgement of an objection. It provides that if the objection complies with the requirements of the Code the carrier can only engage in the low-impact facility activity if:

- . the objection is resolved by agreement between carrier and objector; or
- . the matter is not referred to the Telecommunications Industry Ombudsman, in accordance with clause 4.37;
- . the matter is referred to the Telecommunications Industry Ombudsman, and the Ombudsman informs the carrier in writing that it does not intend to issue a direction; or
- . the Telecommunications Industry Ombudsman gives the carrier a direction.

Clause 4.34: Consultation

This clause provides that a carrier must make reasonable efforts to consult with the objector within 5 business days of receiving the objection and to resolve the objection within 20 business days of receiving the objection.

Clause 4.33 allows for the carrier and objector to come to an agreement and the carrier must comply with that agreement.

Clause 4.35: Changes to low-impact facility activity

This clause requires the carrier to consider changing the low-impact facility activity if the objection is not resolved within 20 business days. The carrier is not required to change the activity if the change is not economically feasible or technically practicable, or where the change has a greater adverse effect on the environment or is inconsistent with recognised industry standard or practice.

The carrier must advise the objector in writing within 25 days of receiving the objection of its intention to change the activity and how, or that it does not intend to change the low-impact facility activity and why.

Division 5 - Objection made to Telecommunications Industry Ombudsman

Clause 4.36: Application of Division 5

This clause provides that where the objection comes, in whole or part, within the jurisdiction of the Telecommunications Industry Ombudsman, the objection can be referred to the Ombudsman if there has been no resolution by agreement between the carrier and objector and the objector is not satisfied with the carrier's response.

Clause 4.37: Request to refer objection to the Telecommunications Industry Ombudsman

This clause provides that the objector can require the carrier to refer the objection to the Telecommunications Industry Ombudsman by making a written request to the carrier within 5 business days of receiving the carrier's response to the objection.

Clause 4.38: Compliance with directions of Telecommunications Industry Ombudsman

This clause requires the carrier to abide by a direction of the Telecommunications Industry Ombudsman.

CHAPTER 5 - TEMPORARY DEFENCE FACILITIES

Part 1 - Introduction

Clause 5.1: Purpose of Chapter 5

Subclause 5.1(1) requires the carrier to abide by the conditions specified in Part 1 of Schedule 3 to the Act, other regulations and the conditions set out in this Code before engaging in a temporary defence facility activity and while engaging in that activity.

Subclauses 5.1(2) and 5.1(3) identify Part 2 and Division 2 of Part 5 of Chapter 5 of this Code as carrier conditions from the Act and Part 3, and the other Divisions of Part 5 of Chapter 5, as the Code conditions.

Clause 5.2: Temporary defence facility activity

This clause defines a temporary defence facility activity as carrying out any activity involved in the connection of a temporary defence facility.

Part 2 - Conditions in the Act for carrier conduct

Part 2 of Chapter 5 outlines provisions contained in the Act and is provided for information only to provide the reader with a comprehensive reference to obligations within the Code.

Clause 5.3: Carrier to do as little damage as practicable

This clause provides that, in carrying out an authorised temporary defence facility activity, a carrier must take all reasonable steps to ensure that it causes as little detriment, inconvenience and damage as is practicable. This is a restatement of clause 8 of Schedule 3 to the Act and continues the obligation set out s.134(1) of the *Telecommunications Act 1991*.

Clause 5.4: Carrier to restore land

This clause provides that a carrier must take all reasonable steps to ensure that the land is restored to its previous condition and that restoration begins within 10 business days of completion of the temporary defence facility activity. Subclause 5.4(3) provides that the carrier, owner and occupier can agree to commence restoration at a later time. This is a restatement of clause 9 of Schedule 3 to the Act.

Clause 5.5: Management of activities

This clause requires a carrier, in carrying out an authorised temporary defence facility activity, to take all reasonable steps to act in accordance with good engineering practice, to protect the safety of persons and property and to ensure that the activity interferes as little as practicable with various activities specified in the clause. This is a restatement of clause 10 of Schedule 3 to the Act and continues the requirements set out in the *Telecommunications National Code 1996*.

Clause 5.6: Agreements with public utilities

This clause requires a carrier to make reasonable efforts to enter into an agreement with a public utility ('public utility' is defined in the dictionary and this definition is based on the definition in clause 2 of Schedule 3 to the Act) about the manner in which the carrier will engage in an authorised temporary defence facility activity that is likely to affect the operations of the utility. A carrier must comply with such an agreement. This is a restatement of clause 11 of Schedule 3 to the Act and continues the requirements imposed on carriers by the Telecommunications National Code 1996.

Clause 5.7: Compliance with industry standards

This clause requires a carrier which engages in an authorised temporary defence facility activity to do so in accordance with any relevant industry standard recognised by the ACA that is likely to reduce a risk to the safety of the public. This clause is a restatement of clause 12 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

Clause 5.8: Compliance with listed international agreements

This clause requires that a carrier which engages in an authorised activity must do so in a manner that is consistent with Australia's obligations under an international agreement prescribed by regulations that is relevant to that activity. This clause is a restatement of clause 13 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

Clause 5.9: Notice to roads authorities, utilities etc

This clause requires a carrier to give notice of any intention to affect existing infrastructure, as specified in clause 19(1) of Schedule 3 to the Act, before carrying out an activity authorised under Division 3 or 4 of Part 1 of Schedule 3. Under clause 19(1), this notice must be given at least 10 business days before engaging in the temporary defence facility activity. The notice must be given to the person or authority responsible for the care and management of the relevant existing infrastructure. This provision is based on s.129(5) of the *Telecommunications Act 1991*.

Subsection 5.9(2) notes that the requirement to give notice may be waived and does not apply to emergency maintenance in the circumstances set out in clause 19(3).

Clause 5.10: Records for certain facilities

This clause requires a carrier who owns or operates a designated overhead line, telecommunications transmission tower or underground facilities to keep and maintain accurate records of the kind and location of those facilities and, where the facility is an eligible underground facility, its capacity to hold further lines.

Part 3 - Additional carrier conditions

Part 3 of Chapter 5 of the Code contains additional carrier conditions which continue or enhance requirements set out in the Telecommunications National Code 1996 and the Land Access Code 1996.

Clause 5.11: Requirements of defence agencies

This clause requires that a carrier must engage in a temporary defence facility activity in accordance with any standard or other requirement that relates to that activity or is notified in writing by the Chief of the Defence Force or the Secretary of the Department of Defence.

Part 4 - Nature Conservation Director, Heritage Chairperson and Environment Secretary

Clause 5.12: Notice to Nature Conservation Director

This clause requires the carrier to give written notice of a proposed temporary defence facility activity in an area, for which the Nature Conservation Director is responsible, before commencement, if practicable. (“Nature Conservation Director” is defined in the dictionary to mean the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*).

Clause 5.13: Notice to Heritage Chairperson

This clause requires the carrier to give written notice of a proposed temporary defence facility activity in an area, for which the Heritage Chairperson is responsible, before commencement if practicable. (“Heritage Chairperson” is defined in the dictionary to mean the Chairperson of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*).

Part 5 - General notification arrangements

Part 5 of Chapter 5 sets out the rights of owners and occupiers of land and the obligations on carriers to give notice in relation to a temporary defence facility activity.

Division 1 - Introduction

Clause 5.14: Purpose of Part 5

Subclause 5.14(1) notes the requirement in clause 17 of Schedule 3 to the Act which requires that, before engaging in an authorised activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. Clause 17 provides that notice of at least 2 business days is sufficient simply to inspect land which is not in an environmentally sensitive area (see clause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in clause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see clause 17(6)).

Subclause 5.14(2) notes the requirement under clause 54 of Schedule 3 to the Act which sets out a procedure that a carrier may follow if unable to identify the owner or occupier of the land who must be given notice as provided for in Division 5 of Part 1 of Schedule 3. The clause provides for alternative arrangements in those circumstances. It is based on s.135 of the *Telecommunications Act 1991*.

Subclause 5.14(3) notes that Division 2 of Part 5 sets out, in a simplified form, the notification requirements of clauses 17 and 54 of Schedule 3.

Subclause 5.14(4) notes that Division 3 sets out additional arrangements for notification.

Division 2 - Notification requirements of Clauses 17 and 54 of Schedule 3

Clause 5.15: Notice to owner and occupier of land

This clause requires that, before engaging in an authorised temporary defence activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. In accordance with clause 17 of Schedule 3 to the Act, clause 5.15 provides that the carrier is required to give at least 10 business days' written notice of its intention to engage in the temporary defence activity.

The notice must specify the purpose of the temporary defence facility activity and specify that if a person suffers loss or damage to property because of the carrier's actions, compensation may be payable under clause 42 of Schedule 3 to the Act. The clause notes that the carrier is not required to give notice if it is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land or the activity is on public land that is not a sensitive area and no material disturbance to the land is involved (subclauses 17(5) to (7) of Schedule 3 to the Act).

Clause 5.16: Serving notices if owner unknown

This clause sets out a procedure that a carrier may follow if unable to identify the owner of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Clause 5.17: Serving notices if occupier unknown

This clause sets out a procedure that a carrier may follow if unable to identify the occupier of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

*Division 3 - Additional notification arrangements***Clause 5.18: Agreement on alternative notification arrangements**

A carrier and owner or occupier of land may agree in writing to alternative notification arrangements. A copy of such an agreement must be given to the ACA before the carrier acts under the agreement.

Clause 5.19: Additional arrangements for serving notices

Where the carrier has been unable to give the occupier a notice about the activity, either personally or by post and the owner and occupier is unknown, the carrier must attach a copy of a notice, to a conspicuous part of the land, stating the date that the activity commenced and a description of the activity.

CHAPTER 6 - MAINTENANCE OF FACILITIES

Part 1 - Introduction

Clause 6.1: Purpose of Chapter 6

Subclause 6.1(1) requires the carrier to abide by the conditions specified in Part 1 of Schedule 3 to the Act, other regulations and the conditions set out in the Code before engaging in a maintenance activity and while engaging in that activity.

Subclauses 6.1(2) and 6.1(3) identify Part 2 and Division 2 of Part 5 of Chapter 6 of the Code as carrier conditions from the Act and Parts 3 and 4, and the other Divisions of Part 5 of Chapter 6 as the Code conditions.

Clause 6.2: Maintenance activity

This clause defines a *maintenance activity* as carrying out any activity involved in the maintenance of a facility.

Part 2 - Conditions in the Act for carrier conduct

Part 2 of Chapter 6 outlines provisions contained in the Act and is provided for information only to provide the reader with a comprehensive reference of obligations within the Code.

Clause 6.3: Carrier to do as little damage as practicable

This clause provides that, in carrying out a *maintenance activity*, a carrier must take all reasonable steps to ensure that it causes as little detriment, inconvenience and damage as is practicable. This is a restatement of clause 8 of Schedule 3 to the Act and continues the obligation set out s.134(1) of the *Telecommunications Act 1991*.

Clause 6.4: Carrier to restore land

This clause provides that a carrier must take all reasonable steps to ensure that the land is restored to its previous condition and that restoration begins within 10 business days of completion of the maintenance activity. Subclause 6.4(3) provides that the carrier, owner and occupier can agree to commence restoration at a later time. This is a restatement of clause 9 of Schedule 3 to the Act.

Clause 6.5: Management of activities

This clause requires a carrier, in carrying out a *maintenance activity*, to take all reasonable steps to act in accordance with good engineering practice, to protect the safety of persons and property and to ensure that the activity interferes as little as practicable with various activities specified in the clause. This is a restatement of clause 10 of Schedule 3 to the Act and continues the requirements set out in the Telecommunications National Code 1996.

Clause 6.6: Agreements with public utilities

This clause requires a carrier to make reasonable efforts to enter into an agreement with a public utility ('public utility' is defined in the dictionary and this definition is based on the definition in clause 2 of Schedule 3 to the Act) about the manner in which the carrier will engage in a *maintenance activity* that is likely to affect the operations of the utility. A carrier must comply with such an agreement. This is a restatement of clause 11 of Schedule 3 to the Act and continues the requirements imposed on carriers as set out in the Telecommunications National Code 1996.

Clause 6.7: Compliance with industry standards

This clause requires a carrier which engages in a *maintenance activity* to do so in accordance with any relevant industry standard recognised by the ACA that is likely to reduce a risk to the safety of the public. This clause is a restatement of clause 12 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

This clause deals primarily with safety standards but is related to the more general requirement for compliance with standards and codes in clause 6.13.

Clause 6.8: Compliance with listed international agreements

This clause requires that a carrier which engages in a *maintenance activity* must do so in a manner that is consistent with Australia's obligations under an international agreement prescribed by regulations that is relevant to that activity. This clause is a restatement of clause 13 of Schedule 3 to the Act and continues requirements set out in the Telecommunications National Code 1996.

Clause 6.9: Notice to roads authorities, utilities etc

This clause requires a carrier to give notice of any intention to affect existing infrastructure, as specified in clause 19(1) of Schedule 3 to the Act, before carrying out an activity authorised under Division 3 or 4 of Part 1 of Schedule 3. Under clause 19(1), this notice must be given at least 10 business days before engaging in the activity. The notice must be given to the person or authority responsible for the care and management of the relevant existing infrastructure. This provision is based on s.129(5) of the *Telecommunications Act 1991*.

Subsection 6.9(2) notes that the requirement to give notice may be waived and does not apply to emergency maintenance in the circumstances set out in clause 19(3) of Schedule 3 to the Act.

Clause 6.10: Records for certain facilities

This clause requires a carrier who owns or operates a designated overhead line, telecommunications transmission tower or underground facilities to keep and maintain accurate records of the kind and location of those facilities and, where the facility is an eligible underground facility, its capacity to hold further lines.

Part 3 - Additional carrier conditions

Part 3 of Chapter 6 of the Code contains additional carrier conditions which continue or enhance requirements set out contained in the Telecommunications National Code 1996 and the Land Access Code 1996.

Clause 6.11: Best practice

This clause requires that a carrier must ensure when designing and planning its deployment of facilities, taking into consideration its existing network structure, that it conforms with best practice. *Best practice* is defined as being the practice set out in an industry code or standard registered or made by the ACA. Where there is no code or standard in force, best practice is the use of design, planning and location practices that minimise the potential degradation of the environment and visual amenity associated with facilities. This clause is an enhancement of the requirements set out under subclause 28(3) of the Telecommunications National Code 1996.

Clause 6.12: Noise

This clause requires that where a carrier engages in a *maintenance activity* between 10 pm and 7 am that the carrier must not exceed noise levels specified under a relevant State or Territory law. Where there is no State or Territory law, a carrier is not to make noise that is at a level that would be audible by a person who is, or is likely to be, in a residence or business premises near the location of the activity. These noise levels can only be exceeded by the carrier through an agreement with the relevant local government authority.

This clause is an enhancement of the requirements set out under subclause 28(4) of the Telecommunications National Code 1996.

Clause 6.13: Compliance with standards and codes

This clause complements clause 6.7 (which deals with safety issues) and clause 6.11 (which deals with “best practice”) in requiring adherence to all standards and codes under Part 6 of the Act. It is anticipated that carriers will actively pursue the development of such standards and codes using the mechanisms available in Part 6 of the Act.

Part 4 - Nature Conservation Director, Heritage Chairperson and Environment Secretary

Division 1 - Purpose of Part 4

Clause 6.14: Purpose

Subclause 6.14(1) is provided for information and notes that the obligations in the Act require the Environment Secretary to be notified where a carrier proposes to engage in maintenance of a facility before 1 January 1999, if the installation is not authorised and there are special Commonwealth environment or heritage concerns. Subclause 6.14(2) restates that where a maintenance activity involves installation of a facility (eg a radiocommunications antenna) then it must comply with clause 55 of Schedule 3 to the Act. Subclause 6.14(3) is the main

operative provision which provides that Divisions 2 and 3 of Part 6 of the Code (dealing with notification to the Nature Conservation Director, Heritage Chairperson and Environment Secretary) apply only to maintenance activities other than installation.

Division 2 - Notification requirements

Clause 6.15: Notice to Nature Conservation Director

This clause requires the carrier to give written notice of a proposed maintenance activity in an area, for which the Nature Conservation Director is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. (“Nature Conservation Director” is defined in the dictionary to mean the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*).

Clause 6.16: Notice to Heritage Chairperson

This clause requires the carrier to give written notice of a proposed maintenance activity in an area, for which the Heritage Chairperson is responsible, at least 10 business days before commencement. The carrier and Chairperson can enter into written alternative arrangements. (“Heritage Chairperson” is defined in the dictionary to mean the Chairperson of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*).

Clause 6.17: Notice to Environment Secretary

This clause requires the carrier to give written notice to the Environment Secretary of a proposed maintenance activity in specified areas (as defined in clause 55(2)(a), 55(2)(b) and 55(2)(c) of Schedule 3 to the Act) at least 10 business days before commencement. The carrier and Secretary can enter into written alternative arrangements. (“Environment Secretary” is defined in the dictionary to mean the Secretary to the Department responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*, currently the Secretary of the Department of Environment, Sport and Territories).

When notifying the Secretary, the carrier must advise the Secretary of any agreement with the National Conservation Director or Heritage Chairperson and provide the Secretary with a copy of any notification that has been given under this agreement.

Clause 6.18: Notification agreements

This clause requires that the carrier must give a copy of any agreements entered into with the Nature Conservation Director, Heritage Chairperson and Environment Secretary to the ACA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which clause 6.18 refers can be very broad and, in effect, replace the notification objections in Part 4 with alternative arrangements agreeable to the carrier and the relevant environment authority.

Division 3 - Response by Environment Secretary

Clause 6.19: Interim notice stopping maintenance activity

The Environment Secretary may issue an interim notice to the carrier requiring the carrier not to engage in a maintenance activity. The notice must invite the carrier to give the Secretary information to allow for the Secretary to consider a final notice under section 6.20.

Clause 6.20: Final notice

Where the Environment Secretary has issued an interim notice, the Secretary must within a reasonable time give the carrier a final notice which confirms, revokes or revokes with conditions the interim notice. The carrier must comply with any conditions imposed by the Secretary.

In issuing the final notice, the Secretary can take into account any issue, but must give consideration to the impact of the activity on the environment (including heritage and cultural values) and the impact on the activity of the carrier and customers of the carrier.

**Part 5 - General notification arrangements
and objections to maintenance activities**

Part 5 of Chapter 6 sets out the rights of owners and occupiers of land and the obligations on carriers to give notice in relation to a maintenance activity. It also includes provisions for the owner and occupier to object to the carrier's proposed activity and, where the objection is not resolved, the carrier is required to refer the matter to the Telecommunications Industry Ombudsman if the objector asks the carrier to do so.

The provisions in the Code necessarily build on the obligations imposed by the Act.

The key elements of the notification and objection process are:

- . the carrier is required to notify owners and occupiers about its proposed *maintenance activities* 10 business days in advance of commencing;
- . the owner or occupier has the right to object in writing to the carrier within a certain period;
- . the carrier is required to attempt to resolve the objection to the owner or occupier's satisfaction within 20 business days of receiving the objection;
- . if there is no resolution, the owner can require the carrier to refer the issue to the Telecommunications Industry Ombudsman.

Division 1 - Introduction

Clause 6.21: Purpose of Part 5

Subclause 6.21(1) notes the requirement in clause 17 of Schedule 3 to the Act which requires that, before engaging in a *maintenance activity* in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. Clause 17 provides that notice of at least 2 business days is sufficient simply to inspect land which is not in an environmentally sensitive area (see clause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in clause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see clause 17(6)).

Subclause 6.21(2) notes the requirement under clause 54 of Schedule 3 to the Act which sets out a procedure that a carrier may follow if unable to identify the owner or occupier of the land who must be given notice as provided for in Division 5 of Part 1 of Schedule 3. The clause provides for alternative arrangements in those circumstances. It is based on s.135 of the *Telecommunications Act 1991*.

Subclause 6.21(3) notes that Division 2 of Part 5 sets out, in a simplified form, the notification requirements of clauses 17 and 54 of Schedule 3.

Subclause 6.21(4) notes that Divisions 3 to 5 of Part 5 set out additional arrangements for notification, and arrangements for the owner or occupier to object to the activity. These objection procedures are modelled on the notification procedures in the Land Access Code 1996.

Clause 6.22: Application of Division 3, 4 and 5 of Part 5

This clause notes that Divisions 3, 4 and 5 of Part 5 do not apply to a *maintenance activity* if the carrier is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land.

Division 2 - Notification requirements of clauses 17 and 54 of Schedule 3

Clause 6.23: Notice to owner and occupier of land

This clause requires that, before engaging in a *maintenance activity* in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land. In accordance with clause 17 of Schedule 3 to the Act, clause 6.23 provides that the carrier is required to give at least 10 business days' written notice of its intention to engage in the maintenance activity.

The notice must specify the purpose of the maintenance activity and specify that if a person suffers loss or damage to property because of the carrier's actions, compensation may be payable under clause 42 of Schedule 3 to the Act. The clause notes that the carrier is not required to give notice if it is responding to a disaster declaration, in circumstances where the safety of life or property is endangered or where the carrier engages in the activity, as part of the installation of a facility, at the request of the owner or occupier of land or the activity is on

public land that is not a sensitive area and no material disturbance to the land is involved (subclauses 17(5) to (7) of Schedule 3 to the Act).

Clause 6.24: Serving notices if owner unknown

This clause sets out a procedure that a carrier may follow if unable to identify the owner of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Clause 6.25: Serving notices if occupier unknown

This clause sets out a procedure that a carrier may follow if unable to identify the occupier of the land who must be given notice as provided for in clause 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances. These procedures are based on s.135 of the *Telecommunications Act 1991*.

Division 3 - Additional notification arrangements

Clause 6.26: Notice to owner and occupier of land: additional requirements

This clause requires that the notice to the owner must include details of the actions the carrier expects to take as part of the maintenance activity and details on the arrangements for owners and occupiers of land to make objections. Where the Telecommunications Industry Ombudsman has issued a document setting out how the carrier is to explain these arrangements, then the carrier must comply with this document.

Clause 6.27: Additional arrangements for serving notices

Where the carrier has been unable to give the occupier a notice about the *maintenance activity*, either personally or by post and the owner and occupier is unknown, the carrier must attach a copy of a notice, to a conspicuous part of the land, stating the date that the activity commenced and a description of the activity.

Clause 6.28: Agreement on alternative notification arrangements

A carrier and owner or occupier of land may agree in writing to alternative notification arrangements.

Division 4 - Objection made to carrier

Clause 6.29: Objection to maintenance activity

This clause gives a person who has been notified by the carrier the right to object in writing about how a carrier intends to exercise its power. The objection must give reasons for the objections in accordance with clause 6.30.

Clause 6.30: Reasons for objection

This clause sets out reasons for the objections. These may relate to all or any of the following matters:

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

Clause 6.31: Time for giving objection to carrier

This clause provides that objections must be given at least 5 days before the carrier proposes to engage in the *maintenance activity*.

Clause 6.32: Activity after objection

This clause in effect provides the “stop” mechanism following lodgement of an objection. It provides that if the objection complies with the requirements of the Code the carrier can only engage in the *maintenance activity* if:

- . the objection is resolved by agreement between carrier and objector; or
- . the matter is not referred to the Telecommunications Industry Ombudsman, in accordance with clause 6.36;
- . the matter is referred to the Telecommunications Industry Ombudsman, and the Ombudsman informs the carrier in writing that it does not intend to issue a direction; or
- . the Telecommunications Industry Ombudsman gives the carrier a direction.

Clause 6.33: Consultation

This clause provides that a carrier must make reasonable efforts to consult with the objector within 5 business days of receiving the objection and to resolve the objection within 20 business days of receiving the objection.

Clause 6.32 allows for the carrier and objector to come to an agreement and the carrier must comply with that agreement.

Clause 6.34: Changes to maintenance activity

This clause requires the carrier to consider changing the *maintenance activity* if the objection is not resolved within 20 business days. The carrier is not required to change the activity if the change is not economically feasible or technically practicable, or where the change has a greater adverse effect on the environment or is inconsistent with recognised industry standard or practice.

The carrier must advise the objector in writing within 25 days of receiving the objection of its intention to change the activity and how, or that it does not intend to change the activity and why.

Division 5 - Objection made to Telecommunications Industry Ombudsman

Clause 6.35: Application of Division 5

This clause provides that where the objection comes, in whole or part, within the jurisdiction of the Telecommunications Industry Ombudsman, the objection can be referred to the Ombudsman if there has been no resolution by agreement between the carrier and objector and the objector is not satisfied with the carrier's response.

Clause 6.36: Request to refer objection to the Telecommunications Industry Ombudsman

This clause provides that the objector can require the carrier to refer the objection to the Telecommunications Industry Ombudsman by making a written request to the carrier within 5 business days of receiving the carrier's response to the objection.

Clause 6.37: Compliance with directions of Telecommunications Industry Ombudsman

This clause requires the carrier to abide by a direction of the Telecommunications Industry Ombudsman.