

Commonwealth of Australia

Telecommunications Act 1997

**Telecommunications (Low-impact Facilities)
Determination 1997**

I, RICHARD KENNETH ROBERT ALSTON, Minister for Communications and the Arts, acting under subclause 6 (3) of Schedule 3 to the *Telecommunications Act 1997* and section 4 of the *Acts Interpretation Act 1901*, make the following determination.

Dated 29 June 1997.

RICHARD ALSTON
Minister for Communications and the Arts

Part 1—Preliminary

1.1 Citation

This determination may be cited as the Telecommunications (Low-impact Facilities) Determination 1997.

1.2 Commencement

This determination commences on 1 July 1997.

Background to determination

Part 1 of Schedule 3 to the *Telecommunications Act 1997* authorises a carrier to enter on land and install a facility if the facility is a low-impact facility.

Under subclause 6 (3) of Part 1, the Minister may, by written instrument, determine that a specified facility is a low-impact facility.

Under subclauses 6 (4), (5) and (7), certain facilities cannot be low-impact facilities:

- designated overhead lines
- a tower that is not attached to a building
- a tower attached to a building and more than 5 metres high
- an extension to a tower that has previously been extended
- an extension to a tower, if the extension is more than 5 metres high.

A facility cannot be a low-impact facility unless it is specified in this determination. Therefore, overhead cabling and new mobile telecommunications towers are not low-impact facilities.

Also, a facility will be a low-impact facility only if it is installed in particular areas identified in this determination. The areas have an order of importance, based on zoning under State or Territory laws, so that any area only has its “highest” possible zoning. The order of priority is:

- area of environmental significance
- residential areas
- commercial areas
- industrial areas
- rural areas.

One effect of this determination is that a facility in an area of environmental significance cannot be a low-impact facility.

Rules for the installation and maintenance of a low-impact facility can be found in Schedule 3 to the *Telecommunications Act* and the *Telecommunications Code of Practice 1997*.

Simplified outline of determination

The determination has 3 Parts.

Part 2 identifies areas in which a facility may be installed, by reference to zoning arrangements under State and Territory planning laws.

Part 3 and the Schedule identify the low-impact facilities.

Definitions for words and expressions used in this determination are to be found in section 1.3.

1.3 Definitions

In this determination:

Aboriginal person has the same meaning as in Schedule 3 to the Act;

Act means the *Telecommunications Act 1997*;

area of environmental significance has the meaning given by section 2.5;

commercial area has the meaning given by section 2.1;

emergency, for the installation of a facility, means circumstances in which the facility must be installed without delay to protect:

- (a) the integrity of a telecommunications network or a facility; or
- (b) the health or safety of persons; or
- (c) the environment; or
- (d) property; or
- (e) the maintenance of an adequate level of service;

emergency services organisation has the same meaning as in subsection 265 (11) of the Act;

Note: At the commencement of this determination, the emergency service organisations were:

- a police force or service
- a fire service
- an ambulance service
- a service specified in the numbering plan (see Act, s 455) as an emergency services organisation
- a service for despatching the force or service.

industrial area has the meaning given by section 2.2;

installation, for a facility, has the same meaning as in Part 1 of Schedule 3 to the Act;

Note: Installation includes:

- construction of the facility
- attachment of the facility to a building or other structure
- any activity ancillary to installation.

listed international agreement has the same meaning as in Schedule 3 to the Act;

Note: Listed international agreements are agreements specified in the regulations.

Nature Conservation Director means the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*;

planning law, for an area, means a law of the State or Territory where the area is located dealing with land use, planning or zoning;

principal designated use, for an area, has the meaning given by section 1.4;

public utility has the same meaning as in Schedule 3 to the Act;

relevant local government authority, for land in a State or Territory, means an authority of the State or Territory responsible for the local government of the area where the land is located;

residential area has the meaning given by section 2.3;

rural area has the meaning given by section 2.4;

subscriber connection means an installation for the sole purpose of connecting premises to a telecommunications network;

Torres Strait Islander has the same meaning as in Schedule 3 to the Act;

tower means a tower, pole or mast.

Note: A number of other words and expressions used in this determination are defined in the Telecommunications Act 1997 (see s 7), including “carrier” and “facility”.

1.4 Principal designated use

- (1) If an area is described, under a planning law, as having a sole or principal use, the use is the **principal designated use** of the area.
- (2) If an area is described, under a planning law, as having 2 or more uses, in terms that show that 1 of the uses is the predominant, preferred or most likely use, the use is the **principal designated use** of the area.
- (3) If an area is described, under a planning law, as having 2 or more principal uses, without any indication of the predominant, preferred or most likely use, the **principal designated use** of the area is determined on the following basis:
 - (a) if the uses include residential purposes, the principal designated use is for residential purposes;
 - (b) if the uses include commercial purposes, but not residential purposes, the principal designated use is for commercial purposes;
 - (c) if the uses include industrial purposes, but neither residential nor commercial purposes, the principal designated use is for industrial purposes.
- (4) If a carrier proposes to engage in a low-impact facility activity in an area under Chapter 4 of the Telecommunications Code of Practice 1997, the principal designated use of the area is to be determined by reference to the time when the carrier proposes to issue the first notice to the owner or occupier of land in the area under Part 5 of that Chapter.

Note: Areas of environmental significance are identified in accordance with section 2.5, not by reference to planning laws.

The effect of this determination is that an area may be an area of environmental significance, and also a residential, commercial, industrial or rural area identified by reference to planning laws. However, the area’s status as an area of environmental significance is more important for the identification of low-impact facilities.

Part 2—Areas

2.1 Commercial area

An area is a commercial area if its principal designated use is for commercial purposes.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4 (4).

2.2 Industrial area

An area is an industrial area if its principal designated use is for industrial purposes.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4 (4).

2.3 Residential area

- (1) An area is a residential area if its principal designated use is for residential purposes.
- (2) A part of a built-up area is a residential area if it cannot otherwise be described as a commercial, industrial or rural area.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4 (4).

2.4 Rural area

- (1) An area is a rural area if its principal designated use is for rural purposes.
- (2) An area that is not part of a built-up area is a rural area if it cannot otherwise be described as a commercial, industrial or residential area.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4 (4).

2.5 Area of environmental significance

- (1) An area is an area of environmental significance if it is identified property for section 3A of the *World Heritage Properties Conservation Act 1983*.

- (2) An area is an area of environmental significance if it is an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*).
- (3) An area is an area of environmental significance if it is a place that Australia is required to protect by the terms of a listed international agreement.
- (4) An area is an area of environmental significance if it is an area that, under a law of the Commonwealth, or a State or Territory, is reserved wholly or principally for nature conservation purposes (however described).
- (5) An area is an area of environmental significance if it is an area that, under a law of the Commonwealth, or a State or Territory, is protected from significant environmental disturbance.
- (6) An area is an area of environmental significance if it is entered in the Register of the National Estate or the Interim List for that Register.
- (7) An area is an area of environmental significance if it is registered under a law of a State or a Territory relating to heritage conservation.
- (8) An area is an area of environmental significance if it is of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.

Part 3—Low-impact facilities

3.1 Facilities

- (1) A facility described in column 2 of an item in the Schedule is a low-impact facility only if it is installed, or to be installed, in an area mentioned in column 3 of the item.
 - (2) However, the facility is not a low-impact facility if the area is also an area of environmental significance.
 - (3) For subsection (1), trivial variations for a facility mentioned in column 2 are to be disregarded.
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SCHEDULE

Section 3.1

FACILITIES AND AREAS

PART 1—RADIO FACILITIES

Column 1	Column 2	Column 3
Item no.	Facility	Areas
1	Subscriber connection deployed by radio terminal antenna or dish: (a) not more than 1.2 metres in diameter; and (b) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural
2	Panel antenna: (a) flush mounted to an existing structure; and (b) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural

SCHEDULE—continued

Column 1	Column 2	Column 3
Item no.	Facility	Areas
3	Panel antenna: (a) not more than 2.8 metres long; and (b) if the antenna is attached to a structure—protruding from the structure by not more than 3 metres; and (c) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural
4	Array of omnidirectional antennas: (a) not more than 4.5 metres long; and (b) not more than 5 metres apart; and (c) if the array is attached to a structure—protruding from the structure by not more than 2 metres	Industrial Rural

SCHEDULE—continued

Column 1	Column 2	Column 3
Item no.	Facility	Areas
5	Radiocommunications dish: (a) not more than 1.2 metres in diameter; and (b) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural
6	Microcell installation with: (a) a cabinet not more than 1 cubic metre in volume; and (b) a separate antenna not more than 1 metre long	Residential Commercial Industrial Rural
7	In-building coverage installation: (a) to improve cellular coverage to mobile phone users operating inside a building; and (b) wholly contained and concealed in a building	Residential Commercial Industrial Rural
8	Equipment installed inside a structure, including an antenna concealed in an existing structure	Commercial Industrial Rural
9	An extension to a tower if: (a) the height of the extension does not exceed 5 metres; and (b) there have been no previous extensions to the tower	Industrial Rural

PART 2—UNDERGROUND HOUSING

Column 1	Column 2	Column 3
Item no.	Facility	Areas
1	Pit with surface area of not more than 2 square metres	Residential Commercial Industrial Rural
2	Manhole with surface area of not more than 2 square metres	Residential Commercial Industrial Rural
3	Underground equipment shelter or housing with surface area of not more than 2 square metres	Residential Commercial Industrial Rural

SCHEDULE—continued

PART 3—ABOVE GROUND HOUSING

Column 1	Column 2	Column 3
Item no.	Facility	Areas
1	Pillar: (a) not more than 2 metres high; and (b) with a base area of not more than 2 square metres	Residential Commercial Industrial Rural
2	Roadside cabinet: (a) not more than 2 metres high; and (b) with a base area of not more than 2 square metres	Residential Commercial Industrial Rural
3	Pedestal: (a) not more than 2 metres high; and (b) with a base area of not more than 2 square metres	Residential Commercial Industrial Rural
4	External equipment shelter: (a) not more than 2.5 metres high; and (b) with a base area of not more than 5 square metres; and (c) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural

SCHEDULE—continued

Column 1	Column 2	Column 3
Item no.	Facility	Areas
5	External equipment shelter: (a) used solely to house equipment used to assist in providing a service by means of a facility mentioned in Part 1; and (b) not more than 3 metres high; and (c) with a base area of not more than 7.5 square metres; and (d) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural

SCHEDULE—continued

PART 4—UNDERGROUND CABLE FACILITIES

Column 1	Column 2	Column 3
Item no.	Facility	Areas
1	Underground conduit or cable: (a) deployed by narrow trench; and (b) not more than 150 metres long; and (c) not more than 150 millimetres wide	Residential Commercial
2	Underground conduit or cable: (a) deployed by narrow trench or direct burial (eg by mole plough); and (b) not more than 300 millimetres wide	Industrial Rural
3	Underground conduit or cable (a) deployed by bore or directional drill hole; and (b) not more than 150 millimetres in diameter; and (c) at least 600 millimetres below the surface	Residential Commercial Industrial Rural
4	Cable location marking post or sign	Residential Commercial Industrial Rural

SCHEDULE—continued

PART 5—PUBLIC PAYPHONES

Column 1	Column 2	Column 3
Item no.	Facility	Areas
1	Public payphone cabinet or booth: (a) used solely for carriage and content services; and (b) not designed for other uses (for example, as a vending machine); and (c) not fitted with devices or facilities for other uses; and (d) not used to display commercial advertising other than advertising related to the supply of standard telephone services	Residential Commercial Industrial Rural
2	Public payphone instrument: (a) used solely for carriage and content services; and (b) not designed for other uses (for example, as a vending machine); and (c) not fitted with devices or facilities for other uses; and (d) not used to display commercial advertising other than advertising related to the supply of standard telephone services	Residential Commercial Industrial Rural

SCHEDULE—continued

PART 6—EMERGENCY FACILITIES

Column 1	Column 2	Column 3
Item no.	Facility	Areas
1	A temporary facility installed: (a) in an emergency; and (b) to provide assistance to an emergency services organisation	Residential Commercial Industrial Rural

PART 7—CO-LOCATED FACILITIES

Column 1	Column 2	Column 3
Item no.	Facility	Areas
1	Facility mentioned in: (a) Part 1, 2, 3, 5 or 6; or (b) item 4 of Part 4 installed by co-locating it with an existing facility	Industrial Rural
2	Conduit or cabling to be laid in: (a) an existing trench; or (b) a trench created by a developer, relevant local government authority, public utility or carrier	Residential Commercial Industrial Rural