

EXPLANATORY STATEMENT

Telecommunications Act 1997

Telecommunications Code of Practice 2018

Issued by the Authority of the Minister for Communications

Authority

Clause 15 of Schedule 3 to the *Telecommunications Act 1997* (the Act) provides that the Minister 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) of Schedule 3 to the Act. Subclause 15(2) of Schedule 3 to the Act requires that a carrier comply with the Code of Practice.

Divisions 2, 3 and 4 of Part 1 of Schedule 3 to 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.

The then Minister for Communications made the *Telecommunications Code of Practice 1997* (1997 Code) on 29 June 1997, which came into effect on 1 July 1997. The Code essentially remakes in substance, the conditions set out in the *Telecommunications Code of Practice 1997* (1997 Code), which is due to sunset on 1 April 2019, with some minor modifications. The 1997 Code was due to sunset on 1 April 2019 in accordance with the *Legislation Act 2003*. The Code also repeals the 1997 Code in reliance on clause 15 of the Tel Act and subsection 33(3) of the *Acts Interpretation Act 1901*, which relevantly provides that where an Act confers a power to make, grant or issue any instrument of a legislative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal such instrument.

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

Relationship to the Telecommunications (Low-Impact Facilities) Determination 2018

Subclause 6(3) of Schedule 3 to the Act provides that the Minister for Communications may determine that a specified facility is a low-impact facility for the purposes of that section. The *Telecommunications (Low-impact Facilities) Determination 2018* (Determination) sets out the facilities which are currently specified to be low-impact facilities. The Determination replaced the *Telecommunications (Low-impact Facilities) Determination 1997* (1997 Determination).

Low-impact facilities are the most common type of carrier network facilities installed under Schedule 3. Installation of these low-impact facilities are regulated under Chapter 4 of the Code.

Purpose and operation

Telecommunications services play an important and expanding role in how people, businesses and governments go about their daily lives. To help provide Australians with better telecommunications services more quickly and cost-effectively, telecommunications carriers have powers and immunities under Schedule 3 to the Act.

Schedule 3 provides carriers with powers to enter land for inspection, and to install and maintain certain types of facilities. It also provides certain immunities, including from a range of state and territory laws when carrying out those activities, such as those laws relating to land use, planning, design, construction, siting, tenancy, environmental assessments and protection.

Carrier powers and immunities are critical to the efficient construction and maintenance of telecommunications networks. They minimise the regulatory burden on carriers so that they can quickly and cost-effectively meet the community's need for access to affordable, fast and reliable telecommunications services.

Most aspects of carrier powers and immunities have been in place since 1997.

When using carrier powers and immunities, the Act requires carriers to notify affected land owners and occupiers of their intended activities, and give them the opportunity to object. The Act also imposes a range of conditions on carriers engaging in authorised activities, including a requirement to comply with the conditions in the Code.

The Code is divided into six 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 five categories of inspection, subscriber connection, low-impact facilities, temporary defence facilities and maintenance.

Each of the five main chapters has been drafted so it can be read on a stand-alone basis, however, each chapter has common sections on:

- carrier conduct (Parts 2 and 3);
- notification to the Director of National Parks 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 the Environment and Energy.

In each Chapter, Part 2 repeats relevant general conduct provisions, from Part 1 of Schedule 3 to the Act as relevant to the particular Part of the Code setting out the detailed conditions. This is done for ease of reader reference, recognising that the Code is read by a wide range of persons who may not be familiar with the Act and how it interacts with the Code. 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 make reasonable efforts to enter agreements with public utilities about how they will undertake activities.
- Carriers are to maintain records for some facilities.
- 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 Director of National Parks and Environment Secretary section are:

- The carriers must notify the Director of National Parks 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 attempt to resolve the objection by agreement.
- If there is an objection, then the objection can be referred to the Telecommunications Industry Ombudsman.

Consultation

On 9 June 2017, the Australian Government released a public consultation paper on possible changes to Schedule 3 to the Act, the 1997 Determination and the 1997 Code. Organisations and members of the public were invited to make submissions about the possible changes. While submissions were required within six weeks of the release of the consultation paper, submissions received after that period were accepted and considered by the Government.

Over 100 submissions were received by the Government, with 81 submissions made public on the Department of Communications and the Arts' website on 18 September 2017. Confidential submissions were not published. A number of submissions focussed on the impact of existing powers and immunities on their land and activities rather than on the specific proposals put forward in the consultation paper. These submissions requested additional changes to carrier powers and immunities under Schedule 3 to the Act.

The Department of Communications and the Arts met with representatives from key stakeholder groups from August 2017 to November 2017, to discuss the possible changes to the regime. Stakeholders generally accepted limited changes being made to the 1997 Code and 1997 Determination, noting additional changes would be subject to further consultation.

The Minister decided to remake the 1997 Determination and the 1997 Code to incorporate nine of the possible changes set out in the consultation paper. Substantive changes to the Code are to section 1.6 to clarify arrangements for unincorporated joint ventures, and other minor changes have been made to various sections of the Code to reflect changes in other legislation and industry standards since 1997 and to update the outdated references to the Australian Communications Authority. The Code is not otherwise changed from the 1997 Code.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required for the Code as it will not have a more than minor regulatory impact (OBPR references 20695 and 23118). OBPR has recognised that the remade Code results in a reduced regulatory burden on telecommunications carriers and no further action is required to remake the Code under the Government's regulatory impact analysis requirements.

Statement of Compatibility with Human Rights

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

Notes on the *Telecommunications Code of Practice 2018*

CHAPTER 1 - PRELIMINARY

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

Section 1.1 Citation

This provides that the Code may be referred to as the *Telecommunications Code of Practice 2018*.

Section 1.2 Commencement

The Code commences on the day after it is registered on the Federal Register of Legislation.

Section 1.3 Authority

This section provides that the Code is made under subclause 15(1) of Schedule 3 to the *Telecommunications Act 1997* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 1.4 Repeal

This provides that the *Telecommunications Code of Practice 1997* in force immediately before the Code commences is repealed. The 1997 Code was due to sunset in 1 April 2019.

Section 1.5 Definitions - the dictionary

This explains how particular defined 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* (the Act) and other Acts as indicated.

Section 1.6 Notification procedures

This section sets out some key notification procedures carriers are to follow to when notifying owners and occupiers and the Director of National Parks and Environment Secretary. The procedures require that the notification periods commence in accordance with the table at Regulation 6 of the *Australian Postal Corporation (Performance Standards) Regulations 1998*, 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.

The section also means that for unincorporated joint venture arrangements where two or more carriers are installing or upgrading facilities, reference to a carrier in the Code is taken to be the carrier legally authorised under the joint venture agreement to act on behalf of the other carriers. To give transparency to land owners and occupiers of the carrier entities forming part of a joint venture, this section includes a new provision which requires a carrier giving notice under the Code to include the legal name and registered place of business of each entity forming part of the joint venture in any such notice.

CHAPTER 2 - INSPECTION OF LAND

Part 1 - Introduction

Section 2.1 Purpose of Chapter 2

Subsection 2.1(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 land entry activity and while engaging in that activity.

Subsections 2.1(2) and 2.1(3) identify Part 2 and Division 2 of Part 5 of Chapter 2 of the 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.

Section 2.2 Land Entry Activity

Subsections 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 section 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.

Section 2.3 Carrier to do as little damage as practicable

This section 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. There are several restatements of this kind included in the Code as aids to the readers about contextually relevant provisions of Schedule 3 to the Act and they are not intended to alter the primary legislation.

Section 2.4 Carrier to restore land

This section 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. Subsection 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.

Section 2.5 Management of activities

This section 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 section. This is a restatement of clause 10 of Schedule 3 to the Act.

Section 2.6 Agreements with public utilities

This section 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.

Section 2.7 Compliance with industry standards

This section requires a carrier which engages in an authorised activity to do so in accordance with any relevant industry standard recognised by the Australian Communications and Media Authority (ACMA) that is likely to reduce a risk to the safety of the public. This section is a restatement of clause 12 of Schedule 3 to the Act.

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

Section 2.8 Compliance with listed international agreements

This section 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 section is a restatement of clause 13 of Schedule 3 to the Act.

Section 2.9 Notice to roads authorities, utilities etc

This section requires a carrier to give notice of any intention to affect existing infrastructure, as specified in subclause 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 section 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.

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 subclause 19(3) of Schedule 3 to the Act.

Section 2.10 Records for certain facilities

This section 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.

Section 2.11 Best practice

This section 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 ACMA. 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.

Section 2.12 Noise

This section 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.

Section 2.13 Compliance with standards and codes

This section complements section 2.7 (which deals with safety issues) and section 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 – Director of National Parks and Environment Secretary

Division 1 - Purpose of Part 4

Section 2.14 Purpose

Subsection 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. Subsection 2.14(2) restates that where a land entry activity involves installation of a facility (e.g. a radiocommunications antenna) then it must comply with clause 55 of Schedule 3 to the Act. Subsection 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 Director of National Parks, and Environment Secretary) apply only to land entry activities other than installation.

Division 2 - Notification requirements

Section 2.15 Notice to Director of National Parks

This section requires the carrier to give written notice of a proposed land entry activity in an area, for which the Director of National Parks is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. (Director of National Parks is defined in the dictionary to mean the Director of National Parks under the *Environment Protection and Biodiversity Conservation Act 1999*).

Section 2.16 Notice to Environment Secretary

This section requires the carrier to give written notice to the Environment Secretary of a proposed land entry activity in specified areas (as defined in paragraphs 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 and Biodiversity Conservation Act 1999*).

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

Section 2.17 Notification agreements

This section requires that the carrier must give a copy of any agreements entered into with the Director of National Parks and Environment Secretary to the ACMA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which section 2.17 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

Section 2.18 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 2.19.

Section 2.19 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 carrier to the 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 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 at least 10 business days or at least 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 specified 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

Section 2.20 Purpose of Part 5

Subsection 2.20(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 subclause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in subclause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see subclause 17(6)).

Subsection 2.20(2) notes the requirement under section 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 section provides for alternative arrangements in those circumstances.

Subsection 2.20(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 to the Act.

Subsection 2.20(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.

Section 2.21 Application of Division 3, 4 and 5 of Part 5

This section 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 Sections 17 and 54 of Schedule 3

Section 2.22 Notice to owner and occupier of land

This section 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, section 2.22 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 section 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).

Section 2.23 Serving notices if owner unknown

This section 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.

Section 2.24 Serving notices if occupier unknown

This section 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.

Division 3 - Additional notification arrangements

Section 2.25 Notice to owner and occupier of land: additional requirements

This section 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.

Section 2.26 Agreement on alternative notification arrangements

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

Section 2.27 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

Section 2.28 Objection to land activity

This section 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 section 2.30.

Section 2.29 Reasons for objection

This section 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; or
- The carrier's proposals to minimise detriment and inconvenience, and to do as little damage as practicable, to the objector's land.

Section 2.30 Time for giving objection to carrier

In accordance with clause 17 of Schedule 3 to the Act, section 2.22 of the Code 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 section 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.

Section 2.31 Activity after objection

This section 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;
- The matter is not referred to the Telecommunications Industry Ombudsman, in accordance with section 2.35;
- 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.

Section 2.32 Consultation

This section 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.

Section 2.31 allows for the carrier and objector to come to an agreement and the carrier must comply with that agreement.

Section 2.33 Changes to land entry activity

This section 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

Section 2.34 Application of Division 5

This section 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.

Section 2.35 Request to refer objection to the Telecommunications Industry Ombudsman

This section 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.

Section 2.36 Compliance with directions of Telecommunications Industry Ombudsman

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

CHAPTER 3 - SUBSCRIBER CONNECTION

Part 1 - Introduction

Section 3.1 Purpose of Chapter 3

Subsection 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.

Subsections 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.

Section 3.2 Subscriber connection activity

This section 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.

Section 3.3 Carrier to do as little damage as practicable

This section 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.

Section 3.4 Carrier to restore land

This section 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. Subsection 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.

Section 3.5 Management of activities

This section 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 section. This is a restatement of clause 10 of Schedule 3 to the Act.

Section 3.6 Agreements with public utilities

This section 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 section 11 of Schedule 3 to the Act.

Section 3.7 Compliance with industry standards

This section requires a carrier which engages in an authorised subscriber connection activity to do so in accordance with any relevant industry standard recognised by the ACMA that is likely to reduce a risk to the safety of the public. This section is a restatement of clause 12 of Schedule 3 to the Act.

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

Section 3.8 Compliance with listed international agreements

This section 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 section is a restatement of clause 13 of Schedule 3 to the Act.

Section 3.9 Notice to roads authorities, utilities etc

This section requires a carrier to give notice of any intention to affect existing infrastructure, as specified in subclause 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 section 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.

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 subclause 19(3).

Section 3.10 Records for certain facilities

This section 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.

Section 3.11 Best practice

This section 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 ACMA. 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.

Section 3.12 Noise

This section 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.

Section 3.13 Co-location

This section 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.

Subsection 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. Subsection 3.13(2) requires carriers to take all reasonable steps to use existing facilities for the activity.

Section 3.14 Cooperation about activities

This section requires, that before engaging in a subscriber connection activity, carriers must take all reasonable steps 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.

Section 3.15 Compliance with standards and codes

This section complements section 3.7 (which deals with safety issues) and section 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.

Section 3.16: Height of subscriber connections

Section 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; and
- 4.9 metres for any other area in which there is vehicle traffic.

These measurements are derived from an Australian Communications and Media Authority standard for the connection of customer cabling (AS/CA s009:2013 Australian standards).

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

Section 3.17 Application of Part 4

This section 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.

Section 3.18 Offer to install subscriber connection underground

Subsection 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 sections 3.19 and 3.20.

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

Subsection 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 section 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 section 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

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

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

Subsection 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

Section 3.22 Application of Part 5

This section 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.

Section 3.23 Offer to install subscriber connection underground

Subsection 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 (including third party land). The carrier must also offer to give the subscriber an indicative price or quote for underground installation in accordance with sections 3.24 and 3.25.

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

Subsection 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 section 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 (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 section 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 (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 section 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, subsection 3.26(2) requires the carrier to offer the third party the option to pay for undergrounding of the connection through their land.

Subsections 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.

Section 3.27 Indicative price to third party

This section 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.

Section 3.28 Installation quote to third party

This section 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.

Section 3.29 Aerial or underground installation: subscriber's land

Subsection 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.

Subsection 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.

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

Subsection 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.

Subsection 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.

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

Subsection 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 - Director of National Parks and Environment Secretary

Section 3.31 Notice to Nature Conservation Director

This section requires the carrier to give written notice of a proposed subscriber connection activity in an area, for which the Director of National Parks is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. (Director of National Parks is defined in the dictionary to mean the Director of National Parks under the *Environment Protection and Biodiversity Conservation Act 1999*).

Section 3.32 Notice to Environment Secretary

This section requires the carrier to give written notice to the Environment Secretary of a proposed subscriber connection activity in specified areas (as defined in paragraph 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 *Environment Protection and Biodiversity Conservation Act 1999*).

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

Section 3.33 Notification agreements

This section requires that the carrier must give a copy of any agreements entered into with the Director of National Parks and Environment Secretary to the ACMA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which section 3.33 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.

Section 3.34 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 3.35.

Section 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 build on the obligations imposed by the Act.

Division 1 - Introduction

Section 3.37 Purpose of Part 7

Subsection 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 subclause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in subclause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see subclause 17(6)) of the Act).

Subsection 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 section provides for alternative arrangements in those circumstances.

Subsection 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 to the Act.

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

Section 3.38 Application of Division 3 of Part 7

Subsections 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.

Subsection 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.

Subsection 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

Section 3.39 Notice to owner and occupier of land

This section 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, section 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 section 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).

Section 3.40 Serving notices if owner unknown

This section 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.

Section 3.41 Serving notices if occupier unknown

This section 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.

Division 3 - Additional Notification Requirements

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

This section 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.

Section 3.43 Agreement on alternative notification arrangements

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

Section 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

Section 4.1 Purpose of Chapter 4

Subsection 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.

Subsections 4.1(2) and 4.1(3) identify Part 2 and Division 2 of Part 5 Chapter 4 of the 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.

Section 4.2 Low-impact facility activity

This section 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 2018*.

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.

Section 4.3 Carrier to do as little damage as practicable

This section 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.

Section 4.4 Carrier to restore land

This section 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. Subsection 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.

Section 4.5 Management of activities

This section 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 section. This is a restatement of clause 10 of Schedule 3 to the Act.

Section 4.6 Agreements with public utilities

This section 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.

Section 4.7 Compliance with industry standards

This section 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 ACMA that is likely to reduce a risk to the safety of the public. This section is a restatement of section 12 of Schedule 3 to the Act.

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

Section 4.8 Compliance with listed international agreements

This section 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 section is a restatement of clause 13 of Schedule 3 to the Act.

Section 4.9 Notice to roads authorities, utilities etc

This section requires a carrier to give notice of any intention to affect existing infrastructure, as specified in subclause 19(1) of Schedule 3 to the Act, before carrying out a low-impact facility activity authorised under Division 3 or 4 of Part 1 of Schedule 3. Under subclause 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.

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 subclause 19(3) of Schedule 3 to the Act.

Section 4.10 Records for certain facilities

This section 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.

Section 4.11 Best practice

This section 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 ACMA. 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.

Section 4.12 Noise

This section 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.

Section 4.13 Co-location

This section 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.

Subsection 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. Subsection 4.13(2) requires carriers to take all reasonable steps to use existing facilities for the activity.

Section 4.14 Cooperation about activities

This section requires, that before engaging in a low-impact facility activity, carriers must take all reasonable steps 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.

Section 4.15 Compliance with standards and codes

This section complements section 4.7 (which deals with safety issues) and section 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 - Director of National Parks and Environment Secretary

Section 4.16 Notice to Nature Conservation Director

This section requires the carrier to give written notice of a proposed low-impact facility activity in an area, for which the Director of National Parks is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. (Director of National Parks is defined in the dictionary to mean the Director of National Parks under the *Environment Protection and Biodiversity Conservation Act 1999*).

Section 4.17 Notice to Environment Secretary

This section requires the carrier to give written notice to the Environment Secretary of a proposed low-impact facility activity in specified areas (as defined in paragraphs 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 and Biodiversity Conservation Act 1999*).

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

Section 4.18 Notification agreements

This section requires that the carrier must give a copy of any agreements entered into with the Director of National Parks and Environment Secretary to the ACMA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which section 4.18 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.

Section 4.19 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 4.20.

Section 4.20 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 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 carrier about its 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 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 at least 10 business days in advance of commencing;
- The owner or occupier has the right to object in writing to the carrier within a specified 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; and
- If there is no resolution, the owner can require the carrier to refer the issue to the Telecommunications Industry Ombudsman.

Division 1 - Introduction

Section 4.21 Purpose of Part 5

Subsection 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. Section 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 subclause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in subclause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see subclause 17(6)).

Subsection 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 section provides for alternative arrangements in those circumstances.

Subsection 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 to the Act.

Subsection 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.

Section 4.22 Application of Part 5

This section 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.

Subsection 4.22(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

Section 4.23 Notice to owner and occupier of land

This section 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, section 4.23 of the 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 section 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 (see subclauses 17(5) to (7) of Schedule 3 to the Act).

Section 4.24 Serving notices if owner unknown

This section 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.

Section 4.25 Serving notices if occupier unknown

This section 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.

Division 3 - Additional notification arrangements

Section 4.26 Notice to owner and occupier of land: additional requirements

This section 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.

Section 4.27 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 ACMA a copy of any agreement with the manager of public land within 30 business days.

Section 4.28 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

Section 4.29 Objection to low-impact facility activity

This section 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 section 4.30.

Section 4.30 Reasons for objection

This section 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; or
- The carrier's proposals to minimise detriment and inconvenience, and to do as little damage as practicable, to the objector's land.

Section 4.31 Time for giving objection to carrier

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

Section 4.32 Activity after objection

This section 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;
- The matter is not referred to the Telecommunications Industry Ombudsman, in accordance with section 4.36;
- 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.

Section 4.33 Consultation

This section 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.

Section 4.32 allows for the carrier and objector to come to an agreement and the carrier must comply with that agreement.

Section 4.34 Changes to low-impact facility activity

This section 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

Section 4.35 Application of Division 5

This section 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.

Section 4.36 Request to refer objection to the Telecommunications Industry Ombudsman

This section 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.

Section 4.37 Compliance with directions of Telecommunications Industry Ombudsman

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

CHAPTER 5 - TEMPORARY DEFENCE FACILITIES

Part 1 - Introduction

Section 5.1 Purpose of Chapter 5

Subsection 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.

Subsections 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.

Section 5.2 Temporary defence facility activity

This section 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.

Section 5.3 Carrier to do as little damage as practicable

This section 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.

Section 5.4 Carrier to restore land

This section 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. Subsection 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.

Section 5.5 Management of activities

This section 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 section. This is a restatement of clause 10 of Schedule 3 to the Act.

Section 5.6 Agreements with public utilities

This section 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.

Section 5.7 Compliance with industry standards

This section 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 ACMA that is likely to reduce a risk to the safety of the public. This section is a restatement of clause 12 of Schedule 3 to the Act.

Section 5.8 Compliance with listed international agreements

This section 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 section is a restatement of clause 13 of Schedule 3 to the Act.

Section 5.9 Notice to roads authorities, utilities etc

This section requires a carrier to give notice of any intention to affect existing infrastructure, as specified in subclause 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 subclause 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.

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 subclause 19(3) of Schedule 3 to the Act.

Section 5.10 Records for certain facilities

This section 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.

Section 5.11 Requirements of defence agencies

This section 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 - Director of National Parks and Environment Secretary

Section 5.12 Notice to Director of National Parks

This section requires the carrier to give written notice of a proposed temporary defence facility activity in an area, for which the Director of National Parks is responsible, before commencement, if practicable. (Director of National Parks is defined in the dictionary to mean the Director of National Parks under the *Environment Protection and Biodiversity Conservation Act 1999*).

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

Section 5.14 Purpose of Part 5

Subsection 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 subclause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in subclause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see subclause 17(6)).

Subsection 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 section provides for alternative arrangements in those circumstances.

Subsection 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.

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

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

Section 5.15 Notice to owner and occupier of land

This section 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, section 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 financial 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 section 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 (see subclauses 17(5) to (7) of Schedule 3 to the Act).

Section 5.16 Serving notices if owner unknown

This section 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 section 54 of Schedule 3 to the Act. Section 54 provides for alternative arrangements in those circumstances.

Section 5.17 Serving notices if occupier unknown

This section 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 clauses 54 of Schedule 3 to the Act. Clause 54 provides for alternative arrangements in those circumstances.

Division 3 - Additional notification arrangements

Section 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 ACMA before the carrier acts under the agreement.

Section 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

Section 6.1 Purpose of Chapter 6

Subsection 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.

Subsections 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.

Section 6.2 Maintenance activity

This section 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.

Section 6.3 Carrier to do as little damage as practicable

This section 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.

Section 6.4 Carrier to restore land

This section 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. Subsection 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.

Section 6.5 Management of activities

This section 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 section. This is a restatement of clause 10 of Schedule 3 to the Act.

Section 6.6 Agreements with public utilities

This section 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.

Section 6.7 Compliance with industry standards

This section requires a carrier which engages in a maintenance activity to do so in accordance with any relevant industry standard recognised by the ACMA that is likely to reduce a risk to the safety of the public. This is a restatement of clause 12 of Schedule 3 to the Act.

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

Section 6.8 Compliance with listed international agreements

This section 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 is a restatement of clause 13 of Schedule 3 to the Act.

Section 6.9 Notice to roads authorities, utilities etc

This section requires a carrier to give notice of any intention to affect existing infrastructure, as specified in subclause 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 subclause 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.

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 subclause 19(3) of Schedule 3 to the Act.

Section 6.10 Records for certain facilities

This section 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.

Section 6.11 Best practice

This section 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 ACMA. 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.

Section 6.12 Noise

This section 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.

Section 6.13 Compliance with standards and codes

This section complements section 6.7 (which deals with safety issues) and section 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 - Director of National Parks and Environment Secretary

Division 1 - Purpose of Part 4

Section 6.14 Purpose

Subsection 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. Subsection 6.14(2) restates that where a maintenance activity involves installation of a facility (e.g. a radiocommunications antenna) then it must comply with clause 55 of Schedule 3 to the Act. Subsection 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 Director of National Parks and Environment Secretary) apply only to maintenance activities other than installation.

Division 2 - Notification requirements

Section 6.15 Notice to Director of National Parks

This section requires the carrier to give written notice of a proposed maintenance activity in an area, for which the Director of National Parks is responsible, at least 10 business days before commencement. The carrier and Director can enter into written alternative arrangements. (Director of National Parks is defined in the dictionary to mean the Director of National Parks under the *Environment Protection and Biodiversity Conservation Act 1999*).

Section 6.16 Notice to Environment Secretary

This section requires the carrier to give written notice to the Environment Secretary of a proposed maintenance activity in specified areas (as defined in paragraphs 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 and Biodiversity Conservation Act 1999*).

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

Section 6.17 Notification agreements

This section requires that the carrier must give a copy of any agreements entered into with the Director of National Parks and Environment Secretary to the ACMA within 30 business days and that the carrier must comply with these agreements.

It is intended that the agreements to which section 6.17 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.

Divisions 3 - Response by Environment Secretary

Section 6.18 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 6.19.

Section 6.19 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 about its 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 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 at least 10 business days in advance of commencing;
- The owner or occupier has the right to object in writing to the carrier within a specified 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; and
- If there is no resolution, the owner can require the carrier to refer the issue to the Telecommunications Industry Ombudsman.

Division 1 - Introduction

Section 6.20 Purpose of Part 5

Subsection 6.20(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 subclause 17(4)). The notice requirement may be waived and does not apply to emergency maintenance in the circumstances set out in subclause 17(5) or simple inspection of a public place which is not in an environmentally sensitive area (see subclause 17(6)).

Subsection 6.20(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 section provides for alternative arrangements in those circumstances.

Subsection 6.20(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 to the Act.

Subsection 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.

Section 6.21 Application of Division 3, 4 and 5 of Part 5

This section 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

Section 6.22 Notice to owner and occupier of land

This section 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, section 6.22 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 section 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 (see subclauses 17(5) to (7) of Schedule 3 to the Act).

Section 6.23 Serving notices if owner unknown

This section 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. Section 54 provides for alternative arrangements in those circumstances.

Section 6.24 Serving notices if occupier unknown

This section 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. That clause provides for alternative arrangements in those circumstances.

Division 3 - Additional notification arrangements

Section 6.25 Notice to owner and occupier of land: additional requirements

This section 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.

Section 6.26 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.

Section 6.27 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

Section 6.28 Objection to maintenance activity

This section 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 section 6.29.

Section 6.29 Reasons for objection

This section 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; or
- The carrier's proposals to minimise detriment and inconvenience, and to do as little damage as practicable, to the objector's land.

Section 6.30 Time for giving objection to carrier

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

Section 6.31 Activity after objection

This section 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;
- The matter is not referred to the Telecommunications Industry Ombudsman, in accordance with section 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.

Section 6.32 Consultation

This section 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.

Section 6.31 allows for the carrier and objector to come to an agreement and the carrier must comply with that agreement.

Section 6.33 Changes to maintenance activity

This section 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

Section 6.34 Application of Division 5

This section 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.

Section 6.35 Request to refer objection to the Telecommunications Industry Ombudsman

This section 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.

Section 6.36 Compliance with directions of Telecommunications Industry Ombudsman

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

Attachment B

Statement of Compatibility with Human Rights

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

Telecommunications Code of Practice 2018

The *Telecommunications Code of Practice 2018* (the Code) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Code

The Code is made under clause 15 of Schedule 3 to the *Telecommunications Act 1997* (the Act). Schedule 3 provides carriers with the power to inspect land to determine whether the land is suitable for the telecommunications carrier's purpose; install certain types of facilities (primarily low-impact facilities) on the land; and maintain a facility that is situated on the land; without seeking state, territory or local government planning approval or land owner consent.

Schedule 3 to the Act imposes requirements on carriers in how they will exercise these powers, including requirements to minimise detriment and inconvenience and notify land owners of intended activities. The Code builds on these requirements, including that carriers are to make reasonable efforts to resolve valid objections from land owners or occupiers. For ease of reader reference, the Code also repeats the relevant requirements of the Act as relevant to each Part of the Code setting out the particular conditions. If the land owner or occupier is not satisfied with the carrier's proposed resolution, and no agreement can be reached, they may ask the carrier, in writing, to refer the objection to the Telecommunications Industry Ombudsman (TIO) for resolution. The carrier must comply with the request to refer the matter to the TIO. Carriers must comply with any direction made by the TIO.

The Code remakes the *Telecommunications Code of Practice 1997* (1997 Code), which was due to sunset on 1 April 2019, largely without change. The remade Code includes clarification of arrangements for unincorporated joint ventures and updates to various other sections to reflect changes in other legislation (including updating outdated references), standards and organisations since 1997.

Low-impact facilities are the most common type of facilities installed under Schedule 3 to the Act. Low-impact facilities are determined in the *Telecommunications (Low-impact Facilities) Determination 2018* (the Determination). Installation of low-impact facilities is regulated under Chapter 4 of the Code.

The Code is divided into six 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 five main chapters are intended to be stand alone, however, they have common sections on:

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

The Code is operational in nature and does not invoke any of the human rights or freedoms as set out in the seven core international human rights treaties to which Australia is a party.

The changes to the 1997 Code, as reflected in the Code, were included in a public consultation paper of possible amendments to the 1997 Code and 1997 Determination. No applicable human rights issues regarding the Code or Determination were raised during the public consultation.

Human rights implications

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

Conclusion

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