

Explanatory Statement

Telecommunications Act 1997

Telecommunications Code of Practice 2021

Issued by the Authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

Purpose

The purpose of the *Telecommunications Code of Practice 2021* (the 2021 Code) is to repeal the *Telecommunications Code of Practice 2018* (the 2018 Code), and replace it with an updated code that modernises and improves the operation of the carrier powers and immunities framework. The 2021 Code consolidates certain provisions that were contained in the 2018 Code and will assist the rollout of 5G infrastructure and other telecommunications facilities.

Authority

The Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister) has made this instrument under subclause 15(1) of the *Telecommunications Act 1997* (the Act).

Divisions 2, 3 and 4 of Part 1 of Schedule 3 to the Act provide authority for carriers to inspect land, install any determined “low-impact facilities” or “temporary defence facilities”, maintain telecommunications facilities, or connect subscribers to an existing network. .

Subclause 15(1) of Schedule 3 to 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 by Division 2, 3, or 4 of Schedule 3 to the Act (other than activities covered by a facility installation permit). Subclause 15(2) of Schedule 3 to the Act requires that a carrier comply with the Code of Practice.

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

The 2021 Code is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

Telecommunications carriers have certain specific legal powers under Schedule 3 to the Act allowing them access to land to inspect, to install and to maintain telecommunications facilities. The Act also provides carriers with immunity from a range of state and territory laws when carrying out those activities, such as laws relating to land use, planning, design, construction, siting, tenancy, environmental assessments and protection.

The powers and immunities framework is critical to the efficient deployment and maintenance of telecommunications networks. It minimises the regulatory burden on carriers so they can quickly and cost-effectively meet the community's need for access to affordable, fast and reliable telecommunications services in a nationally consistent way. Most aspects of the powers and immunities framework have been in place since 1997.

Telecommunications services are increasingly essential to how the Australian public, business and government go about daily life. The increasing demand for telecommunications services, and the roll out of new technologies, such as 5G, means an update to the 2018 Code is needed so the economic and social benefits of new communications technologies can be realised.

When exercising carrier powers, the Act requires carriers to notify affected land owners and occupiers of their intended activities. 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 of Practice. These obligations and conditions are intended to balance the carriers' need for an efficient and economic deployment framework against the interests and concerns of landowners.

The Code of Practice sets out conditions with which carriers must comply when using the powers and immunities provided under Schedule 3 of the Act to engage in activities relating to the inspection of land, the installation of certain types of telecommunications facilities, and the maintenance of telecommunications facilities. The conditions primarily relate to the requirements for carriers to notify affected landowners and occupiers of any intended activities, and give landowners and occupiers the opportunity to object to those activities on certain grounds.

Relationship to the Telecommunications (Low-impact Facilities) Amendment Determination 2021

Subclause 6(3) of Schedule 3 to the Act provides that the Minister may determine that a specified facility is a low-impact facility for the purposes of that section.

Concurrent amendments have been made to the *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD), which sets out the facilities which are currently specified to be low-impact facilities. The amendments are set out in the *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (the 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.

Key changes made to the 2018 Code

The 2021 Code repeals and replaces the 2018 Code, and contains targeted amendments to modernise the obligations and conditions placed on carriers, and to reflect stakeholder feedback obtained through consultation.

Explanatory Statement to the *Telecommunications Code of Practice 2021*

The 2021 Code amends the 2018 Code to introduce the following new provisions:

- a new requirement for carriers to provide installation certificates to landowners after installing “certifiable facilities”
 - new section 1A.7;
- a new conditional power for carriers to refer objections to the Telecommunications Industry Ombudsman (TIO) if they have made reasonable efforts to resolve the matter in good faith (and this has not been effective) - new sections 2.35A, 4.36A, and 6.35A; and
- a new requirement for carriers to give a written notice to an owner or occupier where a proposed activity has been cancelled, that the original notice is withdrawn – new sections 2.25A, 3.41A, 4.26A and 6.25A.

The 2021 Code also amends a number of existing sections in the 2018 Code in the following way:

- consolidates and removes duplicative carrier conditions relevant to safety and operations from each of Chapters 2 to 6 into new Chapter 1A;
- clarifies that notices may be given by electronic communications in accordance with the *Electronic Transactions Act 1999* - section 1.6;
- amends references to reflect updated industry standards – new section 1A.5;
- consolidates and amends the record keeping obligation on carriers who own or operate underground facilities, to require such carriers to record the depth of eligible underground facilities at the time of installation - new section 1A.13;
- amends the ‘Purpose’ sections in sections 2.1, 3.1, 4.1, 5.1 and 6.1 to better clarify and describe the contents of the respective Chapters;
- clarifies the circumstances in which a relevant local government authority may be a “public utility” - see the Dictionary; and
- introduces a timeframe in which carriers must refer landowner/occupier-requested objections to the TIO - sections 2.35, 4.36 and 6.35.

All other sections of the 2021 Code have been reproduced without any substantive alterations from the 2018 Code.

The new and amended requirements do not retrospectively apply to activities undertaken before the 2021 Code comes into effect.

Consolidation and restructuring of carrier safety and operational conditions

The 2018 Code was separated into 6 Chapters, with Chapters 2 to 6 each dealing with a specific activity type. These activities include inspection of land, subscriber connections installations, low-impact facility installations, temporary defence facilities, and maintenance.

Each of these Chapters impose conditions and obligations on the way in which carriers undertake activities using the powers and immunities available to them in Schedule 3 to the Act such as:

- to engage in activities in accordance with best practice;
- to comply with industry standards and codes; and
- to maintain records for certain facilities.

Removal of duplicated conditions and obligations

As a result of dividing these activities into separate Chapters, many of the safety and operational requirements imposed on carriers are duplicated across each Chapter. Following consultation, some stakeholders advised that the extensive duplication in the Code can make it difficult and confusing for landowners unfamiliar with the powers and immunities framework to comprehend the conditions placed on carriers.

To remedy this concern, the 2021 Code has consolidated existing duplicated safety and operational conditions into a new Chapter 1A. Part 2 of Chapter 1A refers to primary carrier safety conditions which are those that contribute to understanding and assurance that telecommunications equipment is installed safely and in accordance with industry standards and codes. Part 3 of Chapter 1A refers to primary carrier operational conditions which are those conditions relating to the way that carriers undertake their activities. The conditions are placed at the front of the 2021 Code to improve readability and accessibility for landowners unfamiliar with the powers and immunities framework. Conditions within existing Chapters which contained unique wording or conditions related to particular activities were not consolidated within Chapter 1A.

These conditions include requiring carriers to engage in activities in accordance with best practice, to comply with industry standards and codes, and to maintain records for certain facilities. Some of these conditions require carriers to take all reasonable steps to cause as little detriment, inconvenience or damage as practicable, to act in accordance with good engineering practice, to protect the safety of persons and property, to interfere as little as practicable with the operations of a public utility, public roads and paths, the movement of traffic and the use of the land, and to protect the environment.

Carriers are also expected to comply with industry standards that relate to the activity, have been recognised by the Australian Communications and Media Authority (ACMA) for use in that industry, and are likely to reduce a risk to the safety of the public if the standard is complied with. The Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (the Standard) is one of the standards that carriers are required to comply with, and is recognised by ACMA under Part 6 of the Act. Existing regulatory arrangements require facilities to comply with the exposure limits set out in the Standard to protect the community and onsite workers, and regulations enforced by ACMA require telecommunications devices and facilities to operate at levels below the exposure limits set out in the Standard.

Depth record keeping obligations

The requirement to maintain records for certain facilities has been amended following consolidation into Chapter 1A. The 2021 Code introduces a new requirement for carriers to keep and maintain records of the depth of eligible underground facilities. This amendment reflects concerns from public utility stakeholders that current records do not record the depth of underground facilities, which would be useful in reducing additional costs and unintended damage to those facilities during major infrastructure projects.

During consultation on the exposure draft of the 2021 Code, carriers were concerned that depth is subject to change over time due to a variety of factors, such as erosion or civil works which can reduce the accuracy of records after extended periods of time. To address this concern, the obligation has been amended to clarify that depth is recorded only at the time of installing a facility. Limiting the obligation in this way is intended to minimise regulatory burden on carriers, while providing landowners with a foundational understanding about the location of facilities on their land.

Landowners must continue exercising appropriate due diligence before engaging in subsurface activities, to avoid interfering with or damaging underground facilities.

Electronic delivery of notices

Following consultation in September 2020, some stakeholders advised they were unsure whether the 2018 Code allows for electronic delivery of notices, primarily by email.

To assist stakeholders, the 2021 Code includes a Note in section 1.6 directing readers to the *Electronic Transactions Act 1999* to determine whether a notice under the 2021 Code may be given by electronic communications.

Updated Industry Standards references

The standards provided as examples in Note 2 to section 1A.5 of the 2021 Code, previously in sections 2.7, 4.7, 5.7, and 6.7, have been amended to reflect updated standards which have since come into effect.

The new references are as follows:

- Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (Rev.1)(RPS S-1); and
- Australian Standard AS 2772.2 (2016) Radiofrequency fields (Part 2): Principles and methods of measurement and computation – 3 kHz-300 GHz (AS/NZS 2772.2:2016/Amdt 1:2018).

‘Purpose’ section amendments

The Purpose sections in sections 2.1, 3.1, 4.1, 5.1 and 6.1 have been amended to better clarify and describe the contents of the respective Chapters. These amendments were made to assist readers in understanding the structure of the Code of Practice. As these sections are provided for information only, they do not change any substantive requirements under Chapters 2 to 6.

Public utilities – relevant local government authorities

Following consultation in September 2020, some stakeholders sought clarity on whether a relevant local government authority is a public utility for the purposes of the relevant definition in the Dictionary. The 2021 Code includes a Note within the definition of “public utility” confirming that a relevant local government authority may be regarded as a public utility for the purposes of the Code of Practice, so far as that relevant local government authority provides any of the following products or services:

- reticulated products or services, such as electricity, gas, water, sewerage or drainage; or
- carriage services (other than carriage services supplied by a carriage service provider); or
- transport services; or
- a product or service of a kind that is similar to a product or service described above.

Carrier to give installation certificates to owner and occupier of land

The 2018 Code introduces conditions and obligations that carriers must comply with when installing low-impact facilities. The LIFD describes which facilities are classified as low-impact facilities for the purposes of Schedule 3 of the Act.

The Act and the 2018 Code require that carriers install low-impact facilities in accordance with best practice, and in compliance with applicable industry codes and standards recognised by the ACMA or under Part 6 of the Act. Despite these existing obligations on carriers, some landowners remain concerned that low-impact facilities are, potentially, not always installed safely or in accordance with applicable standards and codes. Landowners are also concerned they may face additional risk and liability for a poorly installed facility, if that facility causes damage to the landowner’s asset or encumbered infrastructure.

To address landowners’ concerns, the 2021 Code introduces a new requirement in Part 2 of Chapter 1A for carriers to give installation certificates to landowners to provide certainty that the facility on their property has been installed safely. The term ‘installation certificate’ is defined in the Dictionary, and includes an as built structural compliance certificate, an electrical compliance certificate, and copies of any drawings or designs referred to in either certificate. The definition additionally includes qualification requirements for the person or persons preparing installation certificates.

The requirement is constructed in a way that carriers are able to use existing documentation used in the course of current business processes to provide assurance to landowners. Consultation with industry indicated that carriers already obtain these types of documents for most installations as part of their own internal assurance processes, and to comply with any applicable Commonwealth, State, and Territory requirements. This section establishes a requirement for carriers to provide such installation certificates to the landowner within 60 days of installation.

The necessary qualifications and expertise of the relevant person will depend on the type of certificate being issued. For structural compliance certificates, it is expected these documents will be prepared by a civil engineer, or an engineer with similar qualifications. For electrical certificates of compliance, it is expected these documents will be prepared by a suitably licensed electrician. For any designs or drawings referred to in either type of certificate, it follows that these documents are similarly prepared by a suitably qualified person, dependant on the nature of the design or drawing.

Carriers have discretion and flexibility in how it provides the certificates to a landowner. A carrier may choose to provide the documents to the landowner directly, such as by email or post, or may utilise internet-based platforms to make the documents available for the landowner. For example, the carrier may choose to upload the documents to a publicly-accessible website, or by uploading the documents through a cloud-based service. A carrier cannot charge the owner or occupier for access to the certificates.

If a carrier chooses to utilise an internet-based delivery method, they must give the landowner adequate information to reasonably enable the person to locate and access the documents. For example, if the certificates are uploaded to a website, the carrier must give the landowner information about how to access the documents, including any website URL or log-in credentials. This requirement protects landowners by making certain that they are aware of the location of the documents, and how the documents can be accessed.

Providing flexibility in how carriers provide installation certificates to landowners minimises the regulatory burden and costs on carriers, enabling them to use the delivery option which best suits their business process and minimises costs and administrative delays.

Installation certificates must be prepared by a suitably qualified person with appropriate experience and competence in the relevant field. The person preparing the certificate must also hold qualifications consistent with any State and Territory requirements.

This requirement is not intended to extend to the installation of all low-impact facilities described in the Schedule to the LIFD, as amended by the Determination. Rather, this requirement is limited to a narrow range of above-ground facilities which are of a height, location, design, and/or volume which may cause a landowner or occupier to have concerns as to the safety of the installation.

Facilities which require installation certificates to be provided to landowners and occupiers have been classified as “certifiable facilities”. A new section is included in the LIFD which

will classify which types of low-impact facilities are certifiable facilities. A facility is not a certifiable facility if it is attached to a structure which is owned by the carrier, such as a tower, or is located on the ground.

A carrier is not required to comply with this obligation if they have entered into an agreement with the landowner that includes an engineering assurance process for the installation of the facility, and the landowner has agreed to waive the obligations of this section. The department understands from carriers that commercial agreements between landowners and carriers often have provisions which require carriers to obtain appropriate engineering certificates post-installation. This exception was included to avoid duplicating certification procedures in such circumstances and to reduce or mitigate the costs to industry. Carriers can enter into such an agreement with the landowner at any time if they determine they will be unable to provide the installation certificates within 60 days of installing the facility.

Telecommunications Industry Ombudsman

The 2018 Code requires that, where landowners or occupiers object to a notice about proposed works, carriers engage in consultation to resolve the objection. Where consultation between a landowner/occupier and carrier is unsuccessful, the objector may request that the carrier refer their objection to the Telecommunications Industry Ombudsman (TIO). The 2018 Code does not provide a timeframe in which a carrier must refer the objection to the TIO. There is also no means for a carrier to independently refer an objection to the TIO, unless a landowner or occupier has made such a request.

TIO referral timeframe

The 2021 Code inserts a new deadline into Chapters 2, 4 and 6 requiring carriers to refer an objection to the TIO within 10 business days of receiving the landowner/occupier's request to do so. Ten business days was determined to be a balanced timeframe for this requirement, to avoid encumbering carriers with unreasonable administrative burdens, while also ensuring that objections are referred to the TIO within a fixed timeframe.

Carrier TIO referral

The 2021 Code introduces a new conditional power into Chapters 2, 4 and 6, allowing carriers to independently refer objections to the TIO, irrespective of whether a request has been made by the landowner or occupier. Some landowners were concerned that this proposal could result in carriers routinely referring objections to the TIO without genuinely consulting on those objections. The 2021 Code includes new good faith consultation and evidence conditions to ensure carriers reasonably attempt to engage and resolve an objection with a landowner before referring the matter to the TIO.

For example, a carrier may only exercise this power where it has made reasonable efforts in good faith to resolve the matter and, if the objection has not been able to be resolved within 10 business days of commencing consultation with the objector on the matter, the carrier may then refer the matter to the TIO.

The carrier must provide the TIO with a copy of the original notice, which must contain information on the land access process, and explain the landowner's right to object. This is consistent with existing provisions of the Code. The carrier must also provide the TIO with evidence of the attempts made to resolve the matter with the landowner/occupier, and provide notice to the landowner/occupier within two business days of the referral being forwarded to the TIO.

Carriers may choose to exercise this power where continuing negotiations and consultation with the landowner would be ineffective. This power does not otherwise reduce a carrier's consultation obligations under Chapters 2, 4 and 6.

Withdrawal of Notices

The 2018 Code does not require carriers to inform landowners when a proposed activity has been cancelled. It is understood that some carriers do communicate clearly with landowners about changes to, or cancellation of, proposed activities. However, the absence of such a requirement can create confusion for landowners as to whether a carrier still intends to perform a proposed activity, where clear communication between the parties is not in place, or where the landowner is a large agency that may consider multiple notices about proposed activities from carriers.

Following consultation in September 2020, some landowners advised that the absence of a withdrawal requirement increases their administrative burden, by requiring landowners to continually enquire as to the status of a proposed activity. In some cases, landowners incur costs in undertaking their own preparation for the proposed activity.

To remedy this, a new obligation has been inserted into Chapters 2, 3, 4 and 6 of the 2021 Code. This obligation requires carriers to notify an owner or occupier that the original activity notice is withdrawn if a decision is made by the carrier to cancel the proposed activity. The carrier must provide this notice to the landowner within 5 business days of making the decision to cancel the proposed activity. If the carrier later proposes to resume the activity, a new notice must be issued to the landowner or occupier.

The notice of withdrawal must clearly describe what activity has been cancelled, and include a copy of the original notice. These requirements ensure that the landowner has clarity and understands precisely which activities have been cancelled. This is especially necessary in circumstances where multiple activities have been proposed, but only some are being progressed.

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

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared to assess the impact that regulatory changes to the telecommunications carriers' powers and immunities framework would have on the telecommunications industry, the landowner sector and consumers. The Office of Best

Practice Regulation assessed the Regulation Impact Statement as adequate in meeting the Government's best-practice regulation requirements. The Regulation Impact Statement is available at <https://obpr.pmc.gov.au/> using OBPR ID 42617.

Consultation

In September 2020, the Department of Infrastructure, Transport, Regional Development and Communications released a consultation paper outlining 12 proposed reforms to the framework identified by both the Powers and Immunities Reference Group, a group of peak bodies representing carriers, utilities, road authorities, local government and commercial property owners to consider matters related to the operation of the powers and immunities framework, and carriers.

These changes were proposed as part of the Government's commitment to improving the existing framework to get the best out of new networks, including 5G, and to better balance the interests of landowners and carriers.

During the consultation process, the department engaged with peak bodies representing carriers, utilities, local government and commercial building owners about the proposed amendments. The department received 49 submissions in response to the 2020 consultation paper. The majority of submissions preferred changes to the framework to be included in primary or subordinate legislation rather than in an industry code.

In March 2021, exposure drafts for the LIFD and Code amendments were released concurrently for public consultation, taking into account stakeholder feedback from the September 2020 consultation process. These exposure drafts included seven of the 12 reforms proposed in the September 2020 consultation paper, with the remaining five items to be progressed separately after further policy consideration. During the exposure draft consultation process, the department engaged with peak bodies representing carriers, utilities from the energy and water sectors, local government and commercial building owners about the proposed amendments. The department received 19 submissions in response to the exposure drafts.

After reviewing submissions, it was clear there were some matters that required follow up with stakeholders, including the proposed engineering certificate requirement. For example, submissions from industry raised concerns about regulatory costs associated with the proposal, but did not provide sufficient information for the department to analyse the regulatory impact.

The department undertook its own analysis of the regulatory impact of the proposal, informed by advice from an independent engineering company received in June 2021. The department provided the outcomes of this analysis to those industry members that made submissions to the consultation process in July 2021. During consultation with industry, draft subsequent amendments were provided on a confidential basis to a targeted group of industry stakeholders. The purpose of the consultation was to obtain more information to assist the Government in making a decision about whether to introduce a new "engineering certificate"

or “installation certificate” requirement. The targeted stakeholders were invited to make comments on the proposed amendments as well as the regulatory impact on industry as a result of the new requirement.

In submissions, carriers advised that post-installation assessments of facilities are not limited to the consideration of structural matters, and often include evaluations of electrical works. While structural certificates are typically prepared by engineers, electrical compliance certificates are often issued by licensed electricians. On this basis, the terminology for the proposed “engineering certificate” requirement has been changed to “installation certificate”, to more broadly capture both structural and electrical certification, and to acknowledge that electrical compliance certificates may be prepared by persons who are not engineers.

Industry subsequently provided cost information to the department in September 2021 that further informed the department’s recommendation to Government regarding the proposal.

The 2021 Code and LIFD amendments take into account stakeholder feedback from the March 2021 consultation process.

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 2021*

CHAPTER 1 - PRELIMINARY

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

Section 1.1 Name

This section provides for the instrument to be cited as the *Telecommunications Code of Practice 2021* (the 2021 Code).

Section 1.2 Commencement

Section 1.2 provides that the 2021 Code commences on the day after it is registered on the Federal Register of Legislation.

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

Section 1.3 Authority

This section provides that the 2021 Code is made under subclause 15(1) of Schedule 3 to the *Telecommunications Act 1997* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 1.4 Repeal

This section provides that the *Telecommunications Code of Practice 2018* in force immediately before the 2021 Code commences is repealed.

This section also provides a background to, and simplified outline of, the 2021 Code.

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 Act and other Acts as indicated.

Section 1.6 Notification procedures

This is an existing section in the 2018 Code.

This section sets out some key notification provisions which carriers are to follow when notifying owners and occupiers and the Director of National Parks and Environment Secretary. The provisions provide, amongst other things, that:

- a notice will be deemed to have been given to, and received by, an addressee in accordance with the table at Regulation 6 of the *Australian Postal Corporation (Performance Standards) Regulations 1998* (this applies to the delivery of letters by mail);

- a notice left at the place of residence of an addressee is taken to have been given on the second business day after it was left at the residence; and
- notices mentioned under the Code can be combined with another notice mentioned in the Code.

This section has been amended to include a new Note clarifying that notices may be given by means of electronic communications in accordance with the *Electronic Transactions Act 1999*.

CHAPTER 1A – PRIMARY CARRIER CONDITIONS

Part 1 - Introduction

Section 1A.1 Purpose of Chapter 1A

Chapter 1A is a new chapter which has been inserted to consolidate all duplicative safety and operational conditions from Chapters 2 to 6 into a single location. Unless otherwise specified, the effects and requirements of these conditions are not intended to be varied by being consolidated within Chapter 1A.

Subsection 1A.1(1) requires carriers to abide by the conditions specified in Part 1 of Schedule 3 to the Act, other regulations and the conditions set out in the 2021 Code before engaging in a prescribed activity or a temporary defence facility activity.

Subsections 1A.1(2) and 1A.1(3) identify Parts 2 and 3 of Chapter 1A of the 2021 Code as describing the primary safety conditions and primary operational conditions respectively which a carrier must comply with when engaging, or proposing to engage, in a prescribed activity.

Section 1A.2 Prescribed activity

This section provides that a prescribed activity includes the following activities engaged in by a carrier under Division 2, 3, or 4 of Schedule 3 of the Act:

- a land entry activity;
- a subscriber connection activity;
- a low-impact facility activity;
- a maintenance activity.

As temporary defence facility activity conditions are not always identical to prescribed activity conditions, temporary defence facilities are only listed in addition to prescribed activities in Chapter 1A where the conditions are identical. This ensures that no new conditions are unintentionally imposed on temporary defence facility activities.

Part 2 - Primary Carrier Safety Conditions

Part 2 of Chapter 1A contains conditions on carriers that ensure prescribed activities and temporary defence facility activities are conducted safely, in accordance with best practice and in compliance with relevant standards and codes.

Section 1A.3 Management of activities

This section consolidates existing, identical conditions from Chapter 2 to 6 in the *Telecommunications Code of Practice 2018* (the 2018 Code).

This section requires a carrier, in carrying out a prescribed activity or 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 matters specified in the section. This is a restatement of clause 10 of Schedule 3 to the Act.

Section 1A.4 Best practice

This section consolidates existing, identical conditions from Chapter 2, 3, 4 and 6 in the 2018 Code. Subsection 1A.4(1) requires that a carrier must ensure when designing and planning its deployment of facilities, that it conforms with best practice. It is intended that carriers comply with this taking into consideration their existing network structure.

Subsection 1A.4(2) defines best practice to mean conduct complying with an industry code or standard registered or made by the Australian Communications and Media Authority (ACMA) under Part 6 of the Act, applying to the activity.

Subsection 1A.4(3) provides that, where there is no code or standard in force, best practice is conduct regarded by people constructing facilities substantially similar to the carrier's facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.

Section 1A.5 Compliance with industry standards

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code. This section requires a carrier which engages in a prescribed activity or temporary defence facility activity to do so in accordance with any relevant industry standard that relates the activity; is recognised by ACMA as a standard for use in that industry; and 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 1A.6.

Note 2 of the section has been amended to clarify that applicable standards will depend on the kind of activity being engaged in. The examples of applicable standards within Note 2 have also been consolidated from Chapters 2 to 6. Note 2 provides that the applicable standards will depend on the kind of activity being engaged. Note 2 also provides that examples of applicable standards include the:

- Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (Rev.1)(RPS S-1)
- Australian Standard AS 2772.2 (2016) Radiofrequency fields (Part 2): Principles and methods of measurement and computation – 3 kHz-300 GHz (AS/NZS 2772.2:2016/Amdt 1:2018), and
- a relevant industry standard developed, or an industry code determined, under Part 6 of the Act.

Section 1A.6 Compliance with standards and codes

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code. This section complements section 1A.5 (which deals with safety issues) and section 1A.4 (which deals with best practice) in requiring adherence to all standards and codes under Part 6 of the Act applying to the activity. 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.

Section 1A.7 Carrier to give installation certificates to owner and occupier of land

This section imposes a new condition on carriers to provide installation certificates to landowners after installing a certifiable facility. The section introduces installation certificates as a new term, which is defined further in the Dictionary.

Subsection 1A.7(1) provides that after installing a certifiable facility, a carrier must provide all installation certificates to the landowner or occupier within 60 days of installation. A certifiable facility is described in the LIFD, as amended by the *Telecommunications (Low-impact Facilities) Amendment Determination 2021*.

Subsection 1A.7(2) provides that a carrier is taken to have complied with subsection (1) if the carrier:

- makes the certificate available to the owner or occupier on the internet, free of charge, whether or not the installation certificate is available to the general public (e.g. by uploading the documents to a publicly-accessible website); and
- gives the owner or occupier information to reasonably enable them to locate and access the documents (e.g. website URL information and log-in credentials).

Subsection 1A.7(3) provides that this section does not apply if the landowner has entered into an agreement with the carrier that includes a separate engineering assurance process for the installation of the facility, and the landowner has agreed with the carrier to waive the obligations of this section, set out in subsection 1A.7(1).

Part 3 - Primary Carrier Operational Conditions

Part 3 of Chapter 1A sets out other operational conditions for the way carriers undertake prescribed or temporary defence facility activities that do not directly relate to those safety conditions set out in Part 2.

Section 1A.8 Carrier to do as little damage as practicable

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code. This section provides that, in engaging in a prescribed activity or temporary defence facility activity, a carrier must take all reasonable steps to ensure that it causes as little detriment, inconvenience, and does as little damage, as is practicable. This is a restatement of clause 8 of Schedule 3 to the Act.

Section 1A.9 Carrier to restore land

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code. Subsections 1A.9(1) and (2) respectively provide that, in engaging in a prescribed activity or temporary defence facility activity, a carrier must take all reasonable steps to ensure that the land is restored to its previous condition and to ensure that restoration begins within 10 business days of completion of the activity. Subsection 1A.9(3) provides that the carrier, owner and occupier can agree to commence restoration at a later time. Note 1 refers to clause 9 of Schedule 3 to the Act. This section restates that clause.

Note 2 provides that sections 4.4A and 6.4A impose additional requirements in relation to restoring land that are applicable to a carrier who engages in a low-impact facility activity or a maintenance activity, respectively.

Section 1A.10 Noise

This section consolidates existing, identical conditions from Chapter 2, 3, 4 and 6 in the 2018 Code. This section requires that where a carrier engages in a prescribed activity between 10 pm and 7 am, the carrier must not exceed noise levels applying to similar activities specified under a relevant State or Territory law. Where there is no State or Territory law, a carrier is not to make noise between 10 pm and 7 am 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 1A.11 Agreements with public utilities

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code. This section requires a carrier to make reasonable efforts to enter into an agreement with a public utility about the manner in which the carrier will engage in a prescribed activity or temporary defence facility activity that is likely to affect the operations of the utility. The term “public utility” is defined in the Dictionary and this definition is based on the definition in clause 2 of Schedule 3 to the Act. Where such an agreement is in place, a carrier must comply with the agreement. The Note to this section refers to clause 11 of Schedule 3 to the Act. This section restates that clause.

Section 1A.12 Notice to roads authorities, utilities etc.

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code.

This section requires a carrier to give notice of its intention to engage in certain activities (e.g. closing a bridge) as specified in subclause 19(1) of Schedule 3 to the Act, before carrying out a prescribed activity or temporary defence facility activity under Division 3 or 4 of Part 1 of Schedule 3. The purpose of this section is to ensure those persons or authorities responsible for the care and management of a thing affected by the activity have sufficient notice before the activity commences.

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.

The Note to subsection 1A.12(1) provides that the activities mentioned in subclause 19(1) are: closing, diverting or narrowing a road or bridge; installing a facility on, over or under a road or bridge; altering the position of a water, sewerage or gas main or pipe; and altering the position of an electricity cable or wire.

Subsection 1A.12(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 1A.13 Records for certain facilities

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code. 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.

Subsection 1A.13(3) provides that where the facility is an eligible underground facility, the carrier is required to keep and maintain records of the facility's capacity to hold further lines.

This subsection has been amended to require carriers to maintain records of the depth of the underground facility at the time of installing the facility.

Note 1 to this section refers to clause 41 of Schedule 1 to the Act for definitions of the terms "designated overhead line", "telecommunications transmission tower" and "eligible underground facility".

This section has also been amended to include new Notes 2 and 3, which advise that sections 4.10 and 6.10 of the Code of Practice specify additional record keeping requirements for certain temporary facilities, such as an installation activity involving a temporary facility and a maintenance activity that involves installing a temporary facility.

Section 1A.14 Compliance with listed international agreements

This section consolidates existing, identical conditions from Chapter 2 to 6 in the 2018 Code. This section requires that a carrier which engages in a prescribed activity or temporary defence facility activity must do so in a manner that is consistent with Australia's obligations under a 'listed international agreement' relevant to the activity. Clause 2 of Schedule 3 to the Act defines 'listed international agreement' to mean 'an international agreement specified in the regulations.

The Note to this section refers to clause 13 of Schedule 3 to the Act. This section restates that clause.

CHAPTER 2 - INSPECTION OF LAND

Part 1 - Introduction

Section 2.1 Purpose of Chapter 2

This is an existing section in the 2018 Code.

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 2021 Code before engaging in a land entry activity and while engaging in that activity.

Subsections 2.1(2) and 2.1(3) have been amended to better describe the contents of Parts 4 and 5, to assist readers of the 2021. Subsection 2.1(2) provides that Division 2 of Part 5 sets out some of the carrier conditions in the Act, in simplified form, to assist the reader of the 2021 Code.

Subsection 2.1(3) provides that Part 4, and the other Divisions of Part 5, set out: the conditions on carriers related to giving notices to the Director of National Parks, the Environment Secretary, and owners and occupiers of land; the process for owners and occupiers of land to object to a land entry activity; and the process by which objections may be resolved or referred to the Telecommunications Industry Ombudsman.

Section 2.2 Land Entry Activity

This is an existing section in the 2018 Code, and has not been amended.

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 4 – Director of National Parks and Environment Secretary

Division 2 - Notification requirements

Section 2.15 Notice to Director of National Parks

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing Part in the 2018 Code.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 2.25A Withdrawal of notices

This section introduces a new requirement for carriers to give written notice to a landowner or occupier of land if a previously proposed land entry activity has been cancelled.

Subsection 2.25A(2) requires the carrier to give written notice to the owner or occupier that the original notice is withdrawn.

Subsections 2.25A(3) and (4) require that the written notice clearly describe which of the proposed activities have been cancelled, and include a copy of the original notice. The note to subsection 2.25A(3) clarifies that if more than one activity was specified in the original notice, the withdrawal notice must describe each activity that has been cancelled.

Subsection 2.25A(5) provides that the carrier must give the notice of withdrawal within 5 business days after the decision to cancel the activity is made.

Section 2.26 Agreement on alternative notification arrangements

This is an existing section in the 2018 Code, and has not been amended.

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

Section 2.27 Additional arrangements for serving notices

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

This section sets out reasons for the objections that 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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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;
- A request to refer the objection to the Telecommunications Industry Ombudsman is not received by the carrier within the 9 business days mentioned in section 2.35;
- The Telecommunications Industry Ombudsman deals with the objection without giving a direction to the carrier, and the Ombudsman informs the carrier in writing of that outcome; or
- The Telecommunications Industry Ombudsman gives the carrier a direction.

Section 2.32 Consultation

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code.

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.

This section has been amended to require the carrier to refer the objection to the Telecommunications Industry Ombudsman within 10 business days after receiving the request from the objector.

The note to the section explains that if the objector does not ask the carrier to refer the objection, the carrier may engage in the land entry activity and refers to section 2.31, situation 2.

Section 2.35A Referral of matters by carrier to Telecommunications Industry Ombudsman

This section introduces a new, conditional power for carriers to refer matters to the Telecommunications Industry Ombudsman, if:

- the carrier has made reasonable efforts to resolve the matter within 10 business days after commencing consultation on the matter; and
- the carrier's efforts have been conducted in good faith.

This referral can be made without the carrier receiving a request for referral from an objector.

Subsection 2.35A(2) provides that if a carrier refers a matter to the Telecommunications Industry Ombudsman, the carrier must provide evidence to the Ombudsman of the attempts made to resolve the matter, a copy of the original notice to the landowner provided under section 2.22, and give written notice to the objector of the referral within 2 business days.

Section 2.36 Compliance with directions of Telecommunications Industry Ombudsman

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code.

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) have been amended to better describe the contents of Parts 3 to 7, to assist readers of the 2021 Code. Subsection 3.1(2) provides that Division 2 of Part 7 sets out some of the carrier conditions in the Act, in simplified form, to assist the reader of the 2021 Code.

Subsection 3.1(3) provides that Parts 3 to 6, and the other Divisions of Part 7, set out: the conditions on carriers related to giving notices to the Director of National Parks, the Environment Secretary, and owners and occupiers of land; the process for owners and occupiers of land to object to a subscriber activity; and the process by which objections may be resolved or referred to the Telecommunications Industry Ombudsman.

Section 3.2 Subscriber connection activity

This is an existing section in the 2018 Code, and has not been amended.

This section defines a subscriber connection activity as installing a subscriber connection, or carrying out any activity for purposes in connection with the installation of a subscriber connection.

Subscriber connections include all forms of telecommunications services delivered by a line such as the telephone and pay television services.

Part 3 - Additional carrier conditions

Part 3 of Chapter 3 of the Code contains additional carrier conditions.

Section 3.13 Co-location

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 3.16: Height of subscriber connections

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 3.35 Final notice

This is an existing section in the 2018 Code, and has not been amended.

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 3.36 Purpose of Part 7

This is an existing section in the 2018 Code, and has not been amended.

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 3.37 Application of Division 3 of Part 7

This is an existing section in the 2018 Code, and has not been amended.

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 3.38 Notice to owner and occupier of land

This is an existing section in the 2018 Code, and has not been amended.

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 3.39 Serving notices if owner unknown

This is an existing section in the 2018 Code, and has not been amended.

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 3.40 Serving notices if occupier unknown

This is an existing section in the 2018 Code, and has not been amended.

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 3.41 Notice to owner and occupier of land: additional requirements

This is an existing section in the 2018 Code, and has not been amended.

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 3.41A Withdrawal of notices

This section introduces a new requirement for carriers to give written notice to landowners or occupiers if a previously proposed subscriber connection activity has been cancelled.

Subsection 3.41A(2) requires the carrier to give written notice to the owner or occupier that the original notice is withdrawn.

Subsections 3.41A(3) and (4) require that the written notice clearly describe which of the proposed activities have been cancelled, and include a copy of the original notice. The note to subsection 3.41A(3) clarifies that if more than one activity was specified in the original notice, the withdrawal notice must describe each activity that has been cancelled.

Subsection 3.41A(5) provides that the carrier must give the notice of withdrawal to the owner or occupier within 5 business days after the decision to cancel the activity is made.

Section 3.42 Agreement on alternative notification arrangements

This is an existing section in the 2018 Code, and has not been amended.

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

Section 3.43 Additional arrangements for serving notices

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code.

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.

Subsection 4.1(3) has been amended to better describe the contents of Part 5, to assist readers of the Code of Practice. Subsections 4.1(2) and 4.1(3) have been amended to better describe the contents of Parts 3 to 7, to assist readers of the 2021 Code. Subsection 4.1(2) provides that Part 2 and Division 2 of Part 5 sets out some of the carrier conditions in the Act, in simplified form, to assist the reader of the 2021 Code.

Subsection 4.1(3) provides that Parts 3 and 4, and the other Divisions of Part 5, set out: additional carrier conditions, the conditions on carriers related to giving notices to the Director of National Parks, the Environment Secretary, and owners and occupiers of land; the process for owners and occupiers of land to object to a subscriber activity; and the process by which objections may be resolved or referred to the Telecommunications Industry Ombudsman

Section 4.2 Low-impact facility activity

This is an existing section in the 2018 Code, and has not been amended.

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* (the LIFD).

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 4.3A Carrier to remove temporary facilities

This is an existing section in the 2018 Code, and has not been amended.

This section describes the requirements and timeframes imposed on carriers in removing temporary facilities which have been installed for any of the following purposes:

- to minimise disruption to the supply of a carriage service that might result from the maintenance of another facility;
- to minimise disruption to the supply of a carriage service that might result from carrying out the replacement of another facility;
- to provide additional capacity to supply carriage services to persons who are attending an event at a venue;

- to provide additional capacity to supply carriage services to persons who are attending any or all of 2 or more events at a venue;
- to provide additional capacity to supply carriage services to persons who are physically present in a particular area during a high-demand holiday period; or
- to wholly or partly to provide capacity to supply carriage services to one or more emergency services organisations so that those organisations can deal with an emergency or natural disaster.

Section 4.4A - Carrier to restore land—removal of temporary facilities

This is an existing section in the 2018 Code.

This section provides that if a carrier installs a temporary tower or temporary facility, they must take all reasonable steps to ensure that:

- the land is restored to a condition that is similar to its condition before the installation began; and
- the restoration begins within 10 business days after the removal of the facility.

Subsection 4.4A(2) provides that where there is an agreement between the landowner and occupier with the carrier to commence land restoration activities at a time after the end of the period of 10 business days, the timeframe (within 10 business days) does not apply.

This clause applies to temporary towers and temporary facilities installed as low-impact facilities under items 1 - 8, Part 6A and item 2, Part 7 of the Schedule to the LIFD.

This clause has been amended to fix a minor numbering error in subparagraph (1)(a)(vii). This subparagraph has now been moved to a new subparagraph (b). No substantive amendment has been made to this clause.

Section 4.4B - Temporary facility installed at or near a venue—annual limit

This is an existing section in the 2018 Code, and has not been amended.

This section provides an annual limit of 183 days for an installation of one or more low-impact facilities at a particular place to provide additional capacity to supply carriage services to people who are attending an event or events at a venue. This clause applies to temporary towers installed for events under items 6 - 8, Part 6A and to temporary facilities installed under item 8, Part 6A to the Schedule of the LIFD.

Section 4.4C - Temporary facility installed to provide additional capacity during a high-demand holiday period—annual limit

This is an existing section in the 2018 Code, and has not been amended.

This section provides an annual limit of 90 days in a calendar year for an installation of one or more low-impact facilities at a particular place during a high-demand holiday period. The 90 calendar day limit provides an adequate amount of time for the required seasonal coverage while balancing the interests of local communities that may be impacted.

Section 4.10 Records for certain facilities

This is an existing section in the 2018 Code.

This section provides specific requirement for carrier to keep records in installing temporary facilities. These requirements complement the record keeping requirements described in section 1A.13.

This section has been amended to remove the record keeping requirements for facilities which are not temporary facilities. Record keeping requirements for facilities which are not temporary facilities have now been consolidated in section 1A.13.

Part 3 - Additional carrier conditions

Part 3 of Chapter 4 contains additional carrier conditions.

Section 4.13 Co-location

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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.

Part 4 - Director of National Parks and Environment Secretary

Section 4.16 Notice to Nature Conservation Director

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing Part in the 2018 Code.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 4.26A Withdrawal of notices

This section introduces a new requirement for carriers to give written notice to landowners or occupiers if a previously proposed low-impact facility activity has been cancelled.

Subsection 4.26A(2) requires the carrier to give written notice to the owner or occupier that the original notice is withdrawn.

Subsections 4.26A(3) and (4) require that the written notice clearly describe which of the proposed activities have been cancelled, and include a copy of the original notice. The note to subsection 4.26A(3) clarifies that if more than one activity was specified in the original notice, the withdrawal notice must describe each activity that has been cancelled.

Subsection 4.26A(5) provides that the carrier must give the notice of withdrawal within 5 business days after the decision to cancel the activity is made.

Section 4.27 Agreement on alternative notification arrangements

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

This section sets out reasons for the objections that 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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code.

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.

This section has been amended to require the carrier to refer the objection to the Telecommunications Industry Ombudsman within 10 business days after receiving the request from the objector.

Section 4.36A Referral of matters by carrier to Telecommunications Industry Ombudsman

This section introduces a new, conditional power for carriers to refer matters to the Telecommunications Industry Ombudsman, if:

- the carrier has made reasonable efforts to resolve the matter within 10 business days after commencing consultation on the matter; and
- the carrier's efforts have been conducted in good faith.

This referral can be made without the carrier receiving a request for referral from a landowner or occupier.

If a carrier refers a matter to the Telecommunications Industry Ombudsman, the carrier must provide evidence to the Ombudsman of the attempts made to resolve the matter, a copy of the original notice to the landowner provided under section 4.23, and give written notice to the objector of the referral within 2 business days.

Section 4.37 Compliance with directions of Telecommunications Industry Ombudsman

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code.

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) have been amended to better describe the contents of Part 5, to assist readers of the Code of Practice. Subsection 5.1(2) provides that Division 2 of Part 5 sets out some of the carrier conditions in the Act, in simplified form, to assist the reader of the 2021 Code.

Subsection 5.1(3) provides that Part 3, and the other Divisions of Part 5, set out: additional carrier conditions, and the conditions on carriers related to giving notices to the Director of National Parks, the Environment Secretary, and owners and occupiers of land.

Section 5.2 Temporary defence facility activity

This is an existing section in the 2018 Code, and has not been amended.

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

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 5.13 Purpose of Part 5

This is an existing section in the 2018 Code, and has not been amended.

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 5.14 Notice to owner and occupier of land

This is an existing section in the 2018 Code, and has not been amended.

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 5.15 Serving notices if owner unknown

This is an existing section in the 2018 Code, and has not been amended.

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 5.16 Serving notices if occupier unknown

This is an existing section in the 2018 Code, and has not been amended.

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 5.17 Agreement on alternative notification arrangements

This is an existing section in the 2018 Code, and has not been amended.

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 5.18 Additional arrangements for serving notices

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code.

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.

Subsection 6.1(3) has been amended to better describe the contents of Parts 4 and 5, to assist readers of the Code. Subsection 6.1(2) provides that Part 2 and Division 2 of Part 5 sets out some of the carrier conditions in the Act, in simplified form, to assist the reader of the 2021 Code.

Subsection 6.1(3) provides that Part 4, and the other Divisions of Part 5, set out: the conditions on carriers related to giving notices to the Director of National Parks, the Environment Secretary, and owners and occupiers of land; the process for owners and occupiers of land to object to a maintenance activity; and the process by which objections may be resolved or referred to the Telecommunications Industry Ombudsman.

Section 6.2 Maintenance activity

This is an existing section in the 2018 Code, and has not been amended.

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 6.3A Carrier to remove temporary facilities within 28 days

This is an existing section in the 2018 Code, and has not been amended.

This section requires carriers to remove temporary facilities within 28 days.

Subsection 6.3A applies when a carrier engages in a maintenance activity and installs a temporary facility that does not include a tower to minimise disruption to the supply of a carriage service that might result from the maintenance or carrying out the replacement of another facility.

An installation for this purpose must be removed within 28 days after the completion of the maintenance activity. Where the maintenance or replacement of another facility has been completed and the temporary facility is awaiting removal, the temporary facility must not be operational.

Section 6.4A Carrier to restore land—removal of temporary facilities

This is an existing section in the 2018 Code, and has not been amended.

This section provides that if a carrier utilises their maintenance powers to install a temporary facility, they must take all reasonable steps to ensure that:

- the land is restored to a condition that is similar to its condition before the installation began; and
- the restoration begins within 10 business days after the removal of the facility.

Subclause 6.4A(2) provides that where there is an agreement between the landowner and occupier with the carrier to commence land restoration activities at a time after the end of the period of 10 business days, the timeframe (within 10 business days) does not apply.

This clause applies to temporary facilities installed under Item 8, Part 6A of the Schedule to the LIFD.

Section 6.10 Records for certain facilities

This is an existing section in the 2018 Code.

This section provides specific requirement for carrier to keep records in maintaining temporary facilities. These requirements complement the record keeping requirements described in section 1A.13.

This section has been amended to remove the record keeping requirements for facilities which are not temporary facilities. Record keeping requirements for facilities which are not temporary facilities have now been consolidated in section 1A.13.

Part 4 - Director of National Parks and Environment Secretary

Division 2 - Notification requirements

Section 6.15 Notice to Director of National Parks

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing Part in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 6.25A Withdrawal of notices

This section introduces a new requirement for carriers to give written notice to landowners or occupiers if a previously proposed maintenance activity has been cancelled.

Subsection 6.25A(2) requires the carrier to give written notice to the owner or occupier that the original notice is withdrawn.

Subsections 6.25A(3) and (4) require that the written notice clearly describe which of the proposed activities have been cancelled, and include a copy of the original notice. The note to subsection 6.25A(3) clarifies that if more than one activity was specified in the original notice, the withdrawal notice must describe each activity that has been cancelled.

Subsection 6.25A(5) provides that the carrier must give the notice of withdrawal within 5 business days after the decision to cancel the activity is made.

Section 6.26 Additional arrangements for serving notices

This is an existing section in the 2018 Code, and has not been amended.

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

This is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

This section sets out reasons for the objections that 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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code, and has not been amended.

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 is an existing section in the 2018 Code.

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.

This section has been amended to require the carrier to refer the objection to the Telecommunications Industry Ombudsman within 10 business days after receiving the request from the landowner.

Section 6.35A Referral of matters by carrier to Telecommunications Industry Ombudsman

This section introduces a new, conditional power for carriers to refer matters to the Telecommunications Industry Ombudsman, if:

- the carrier has made reasonable efforts to resolve the matter within 10 business days after commencing consultation on the matter; and
- the carrier's efforts have been conducted in good faith.

This referral can be made without the carrier receiving a request for referral from a landowner or occupier.

If a carrier refers a matter to the Telecommunications Industry Ombudsman, the carrier must provide evidence to the Ombudsman of the attempts made to resolve the matter, a copy of the original notice to the landowner provided under section 6.22, and give written notice to the objector of the referral within 2 business days.

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.

SCHEDULE - DICTIONARY

This is an existing Schedule from the 2018 Code. The following amendments have been made to the Schedule:

Certifiable facility

A new definition for “certifiable facility” has been included, which provides that a certifiable facility has the same meaning as in the LIFD.

Installation certificates

A new definition for “installation certificate” has been included which provides that an “installation certificate” include any or all of the following documents:

- an as built structural compliance certificate;
- an electrical certificate of compliance;
- if any of the as built structural compliance certificates or electrical certificates of compliance reference drawings or designs – copies of those drawings and designs.

The above-listed documents must be prepared by suitably qualified persons with appropriate experience and competence in their relevant fields, who hold qualifications consistent with State and Territory requirements, if any. Whether a person is suitably qualified to prepare a certificate will depend on the type of document being prepared.

Prescribed activity

A new definition for “prescribed activity” has been included, signposting the definition provided in section 1A.2.

Public utility

The definition for “public utility” has been amended to include a Note, clarifying that a relevant local government authority may be a public utility if it provides to the public any of the products or services listed in paragraphs (a) to (d).

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 2021

The *Telecommunications Code of Practice 2021* (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 on the land, and maintain a facility without seeking state, territory or local government planning approval or landowner consent.

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*. Installation of low-impact facilities is regulated under Chapter 4 of the Code.

Schedule 3 to the Act imposes requirements on carriers in how they may exercise these powers, by requiring carriers to comply with applicable standards, codes and practices, and by requiring carriers to provide notification to landowners. The Code builds upon these requirements, requiring carriers to comply with the safety, operational, notification and consultation conditions for activities performed under Schedule 3 of the Act.

The Code repeals and replaces the *Telecommunications Code of Practice 2018* (2018 Code). The Code updates and consolidates certain provisions that were contained in the 2018 Code. The Code:

- collates numerous duplicative safety and operational conditions into a single location, to improve accessibility for readers unfamiliar with Schedule 3 of the Act or with the Code;
- introduces a new requirement for carriers to provide installation certificates for certain types of low-impact facility;
- introduces a new requirement for carriers to record the depth of certain underground facilities, as at the time of installing the facility;
- introduces a new requirement for carriers to provide written notice to landowners when a previously proposed activity has been cancelled;
- introduces several new Notes to provide greater clarity for readers in interpreting the Code;

Explanatory Statement to the *Telecommunications Code of Practice 2021*

- introduces a timeframe in which carriers must refer landowner-requested objections to the TIO; and
- introduces a new conditional power for carriers to independently refer matters to the TIO, where consultation with the landowner would not be effective.

The Code is divided into seven chapters. After the preliminary chapter, Chapter 1A has been introduced to collate all duplicative safety and operational conditions into a single location. Chapters 2 to 6 contain specific, additional conditions and obligations in relation to inspection of land, subscriber connections, low-impact facilities, temporary defence facilities and maintenance.

The Determination is compatible with the rights and freedoms recognised or declared in the treaties listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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.