

Telecommunications Act 1997 (Cth) - Schedule 3

Marked-up to show amendments proposed in *Telecommunications Amendment (Mobile Phone Towers) Bill 2011* with additional comments by Telstra Corporation Limited

KEY:

Brown Bill amendments / omissions

Comments

DEFINITIONS:

In this annotated Schedule 3, the following abbreviated terms are used:

ACMA means the Australian Communications and Media Authority.

ARPANSA means the Australian Radiation Protection and Nuclear Safety Agency.

Australian Standard means the *Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz*, published by the ARPANSA in 2002.

Code of Practice means *Telecommunications Code of Practice 1997 (Cth)*.

EME means electromagnetic emissions.

Brown Bill means *Amendment (Mobile Phone Towers) Bill 2011*

Low Impact Determination means *Telecommunications (Low-impact Facilities) Determination 1997 (Cth)*.

Mobile Infrastructure Industry Code means the Deployment of Mobile Network Infrastructure (ACIF C564: 2004) developed by the industry group, Communications Alliance Limited.

Mobile Phone Base Station Deployment Code means the Mobile Phone Base Station Deployment Code (DR2564:2011), the proposed replacement for the Mobile Infrastructure Industry Code.

RF National Site Archive means the Radio Frequency National Site Archive, which is an internet archive of mobile telephone base stations and radio communication facilities in Australia maintained as a collective initiative of the telecommunications industry through the Australian Mobile Telecommunications Association. This is linked to requirements in the Mobile Infrastructure Industry Code.

Schedule 3 means Schedule 3 to the *Telecommunications Act 1997 (Cth)*.

Telecommunications Act means the *Telecommunications Act 1997 (Cth)*.

Wilkie Bill means *Telecommunications Amendment (Enhanced Community Consultation) Bill 2011*.

Schedule 3—Carriers’ powers and immunities

Note: See section 484.

Part 1A—Application of Schedule to entities other than carriers

1A Obligations apply to carriers and other entities that install or maintain facilities

The obligations imposed by this Schedule on a carrier are also imposed on entities other than carriers that install or maintain facilities.

Comment 1: If this drafting is intended to cover contractors carrying out work on behalf of carriers, it is redundant. Clause 43 of Schedule 3 states that a carrier's powers under Schedule 3 extend to its employees and contractors. When exercising these powers, employees and contractors of the carrier are necessarily bound by Schedule 3 in the same manner as the carrier.

If Senator Brown intends this amendment to bring non-carrier EME emitters (State emergency service networks, taxi companies, broadcasters, private citizens etc) within Schedule 3, then this intention should be more clearly stated.

Part 1—General provisions

Division 1—Simplified outline and definitions

1 Simplified outline

The following is a simplified outline of this Part:

- A carrier may enter on land and exercise any of the following powers:
 - (a) the power to inspect the land to determine whether the land is suitable for the carrier’s purposes;
 - (b) the power to install a facility on the land;
 - (c) the power to maintain a facility that is situated on the land.
- The power to install a facility may only be exercised if:
 - (a) the carrier holds a facility installation permit; or
 - (b) the facility is a low-impact facility; or
 - (c) the facility is a temporary facility for use by, or on behalf of, a defence organisation for defence purposes; or
 - (d) the installation is carried out before 1 July 2000 for the sole purpose of connecting a building to a network that was in existence on 30 June 1997.

- A facility installation permit will only be issued in relation to a facility if:
 - (a) the carrier has made reasonable efforts to negotiate in good faith with the relevant proprietors and administrative authorities; and
 - (b) in a case where the facility is a designated overhead line—each relevant administrative authority has approved the installation of the line; and
 - (c) the telecommunications network to which the facility relates is or will be of national significance; and
 - (d) the facility is an important part of the telecommunications network to which the facility relates; and
 - (e) either the greater part of the infrastructure of the telecommunications network to which the facility relates has already been installed or relevant administrative authorities are reasonably likely to approve the installation of the greater part of the infrastructure of the telecommunications network to which the facility relates; and
 - (f) the advantages that are likely to be derived from the operation of the facility in the context of the telecommunications network to which the facility relates outweigh any form of degradation of the environment that is likely to result from the installation of the facility.
- In exercising powers under this Part, a carrier must comply with certain conditions, including:
 - (a) doing as little damage as practicable;
 - (b) acting in accordance with good engineering practice;
 - (c) complying with recognised industry standards;
 - (d) complying with conditions specified in the regulations;
 - (e) complying with conditions specified in a Ministerial Code of Practice;
 - (f) complying with conditions specified in a facility installation permit;
 - (g) giving notice to the owners of land.

2 Definitions

In this Part:

Aboriginal person means a person of the Aboriginal race of Australia.

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

defence organisation means:

- (a) the Department of Defence; or
- (b) the Australian Defence Force; or

- (c) an organisation of a foreign country, so far as the organisation:
 - (i) has functions corresponding to functions of, or of a part of, the Department of Defence or the Australian Defence Force; and
 - (ii) is authorised by the Commonwealth to operate or train in Australia or an external Territory; or
- (d) a part of such an organisation or body.

designated overhead line has the meaning given by clause 3.

ecological community has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

enter on land includes enter on a public place.

environment has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Environment Secretary means the Secretary to the Department responsible for the administration of the *Environment Protection and Biodiversity Conservation Act 1999*.

facility installation permit means a permit issued under clause 25.

installation, in relation to a facility, includes:

- (a) the construction of the facility on, over or under any land; and
- (b) the attachment of the facility to any building or other structure; and
- (c) any activity that is ancillary or incidental to the installation of the facility (for this purpose, **installation** includes an activity covered by paragraph (a) or (b)).

international agreement means:

- (a) a convention to which Australia is a party; or
- (b) an agreement or arrangement between Australia and a foreign country;

and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

land includes submerged land (but does not include submerged land that is beneath Australian waters within the meaning of Schedule 3A).

listed international agreement means an international agreement specified in the regulations.

public inquiry, in relation to a facility installation permit, means a public inquiry under Part 25 about whether the permit should be issued and, if so, the conditions (if any) that should be specified in the permit.

public place includes a place to which members of the public have ready access.

public utility means a body that provides to the public:

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

threatened ecological community means an ecological community that is included in the list of threatened ecological communities kept under Division 1 of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999*.

threatened species means a species that is included in one of the following categories of the list of threatened species kept under Division 1 of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999*:

- (a) extinct in the wild;
- (b) critically endangered;
- (c) endangered;
- (d) vulnerable.

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

3 Designated overhead line

A reference in this Part to a ***designated overhead line*** is a reference to a line:

- (a) that is suspended above the surface of:
 - (i) land (other than submerged land); or
 - (ii) a river, lake, tidal inlet, bay, estuary, harbour or other body of water; and
- (b) the maximum external cross-section of any part of which exceeds:
 - (i) 13 mm; or
 - (ii) if another distance is specified in the regulations—that other distance.

4 Extension to a tower to be treated as the installation of a facility

- (1) For the purposes of the application of this Part to the installation of facilities, if:
 - (a) a tower is a facility; and
 - (b) the tower is, or is to be, extended;then:
 - (c) the carrying out of the extension is to be treated as the carrying out of the installation of the facility; and
 - (d) the extension is to be treated as a facility in its own right.
- (2) ~~To avoid doubt, a reference in this clause to a ***tower*** does not include a reference to an ***antenna***.~~ To avoid doubt, a reference in this clause to a ***tower*** includes a reference to an ***antenna, aerial, dish or other attachment***.
- (3) In this clause:

tower means a tower, pole or mast and includes any mounting piece, bracket, header, spacer, remote radio unit, antenna, dish, aerial or similar attachment.

Comment 2: The change in this definition of "tower" is one of most significant proposals in the Brown Bill. The new definition appears to exclude all radiocommunications facilities from possible designation as a low impact facility.

This proposed amendment appears to be linked to clause 6(3) which sets out the Minister's power to determine a class of "low-impact facilities". By including antenna, aerial, dish, other attachments, mounting piece, bracket, header, spacer, remote radio unit and similar attachments in the definition of tower, the constraints applicable to towers are extended to infrastructure which is usually regarded as distinct from a tower. The changed definition even seems to bring antenna, aerial, and dish within the definition of tower, even when they are not attached to a tower, mast or pole.

This expanded definition of tower, together with proposed prescription that the Minister may not determine that the installation of a "tower" is a low-impact facility (clause 6(5)), means that all transmitting radio facilities would be excluded from the Low Impact Determination.

Division 2—Inspection of land

5 Inspection of land

- (1) A carrier may, for the purposes of determining whether any land is suitable for its purposes:
 - (a) enter on, and inspect, the land; and
 - (b) do anything on the land that is necessary or desirable for that purpose, including, for example:
 - (i) making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil; and
 - (ii) felling and lopping trees and clearing and removing other vegetation and undergrowth; and
 - (iii) closing, diverting or narrowing a road or bridge; and
 - (iv) installing a facility in, over or under a road or bridge; and
 - (v) altering the position of a water, sewerage or gas main or pipe; and
 - (vi) altering the position of an electricity cable or wire.
- (2) A carrier may, for the purpose of surveying or obtaining information in relation to any land that, in the carrier's opinion, is or may be suitable for its purposes:
 - (a) enter on any land; and
 - (b) do anything on the entered land that is necessary or desirable for that purpose, including, for example:
 - (i) making surveys and taking levels; and
 - (ii) felling and lopping trees and clearing and removing other vegetation and undergrowth; and
 - (iii) closing, diverting or narrowing a road or bridge; and
 - (iv) installing a facility in, over or under a road or bridge; and
 - (v) altering the position of a water, sewerage or gas main or pipe; and
 - (vi) altering the position of an electricity cable or wire.
- (3) A reference in this Part to engaging in activities under this Division includes a reference to exercising powers under this Division.

Division 3—Installation of facilities

6 Installation of facilities

- (1) A carrier may, for purposes connected with the supply of a carriage service, carry out the installation of a facility if:
- (a) the carrier is authorised to do so by a facility installation permit; or
 - (b) the facility is a low-impact facility (as defined by subclause (3)); or
 - (c) the facility is a temporary facility for use by, or on behalf of, a defence organisation for defence purposes; or
 - (d) all of the following conditions are satisfied in relation to the installation concerned:
 - (i) the installation occurs before 1 July 2000;
 - (ii) the installation is carried out for the sole purpose of connecting a building, structure, caravan or mobile home to a line that forms part of a telecommunications network;
 - (iii) the whole or a part of the network was in existence at the end of 30 June 1997.

Note: If the installation of a facility is not authorised by this clause, the installation may require the approval of an administrative authority under a law of a State or Territory.

- (2) If subclause (1) authorises a carrier to carry out a particular activity, the carrier may, for purposes in connection with the carrying out of that activity:
- (a) enter on, and occupy, any land; and
 - (b) on, over or under the land, do anything necessary or desirable for those purposes, including, for example:
 - (i) constructing, erecting and placing any plant, machinery, equipment and goods; and
 - (ii) felling and lopping trees and clearing and removing other vegetation and undergrowth; and
 - (iii) making cuttings and excavations; and
 - (iv) restoring the surface of the land and, for that purpose, removing and disposing of soil, vegetation and other material; and
 - (v) erecting temporary workshops, sheds and other buildings; and
 - (vi) levelling the surface of the land and making roads.

- (3) The Minister may, by written instrument, determine that a specified facility is a low-impact facility for the purposes of this clause. The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (4) A designated overhead line must not be specified in an instrument under subclause (3).
- (4A) A submarine cable (within the meaning of Schedule 3A) must not be specified in an instrument under subclause (3).

(5) A tower must not be specified in an instrument under subclause (3). For this purpose, *tower* has the same meaning as in clause 4.

~~(5) A tower must not be specified in an instrument under subclause (3) unless:~~

~~(a) the tower is attached to a building; and~~

~~(b) the height of the tower does not exceed 5 metres.~~

~~(6) To avoid doubt, a reference in subclause (5) to a tower does not include a reference to an antenna.~~

~~(7) An extension to a tower must not be specified in an instrument under subclause (3) unless:~~

~~(a) the height of the extension does not exceed 5 metres; and~~

~~(b) there have been no previous extensions to the tower.~~

~~For this purpose, tower has the same meaning as in clause 4.~~

Comment 3: As noted, the revised definition of "tower" in clause 4 refers to antenna, aerial, dish, other attachment, mounting piece, bracket, header, spacer, remote radio unit and similar attachments.

This expanded definition of tower, together with proposed prescription that the Minister may not determine that the installation of a "tower" is a low-impact facility (clause 6(5)), means that all radio transmitting facilities would be excluded from the Low Impact Determination.

Telstra's brief comments on the impact of this amendment are set out below:

- Cellular Mobile Network: Exclusion from the Low Impact Determination would have a huge impact on Telstra's ability to develop the mobile telephone network. In addition to obstructing the rollout of common mobile facilities, it would affect in-building systems and low power pico and micro cell facilities that boost coverage in busy areas. Customer service impacts would be inevitable.
- Fixed Radio Network: This network is entirely separate from the Cellular Mobile Network. It provides the primary network for delivery of standard telecommunications services in area where remoteness or terrain prevent the installation of cabling. The radio network operates as a back-up system in other areas. If Telstra is unable to extend and manage this network under the Telecommunications Act powers, the cost of network deployment would necessarily increase considerably as projects move through State planning law processes and occupation rights are negotiated with land owners. The whole process would add many months to every project. Customer service impacts would be inevitable.
- Local government: Local government would become the consent authority for a large number of additional infrastructure classes in respect of which they have never been required to make development decisions. The local government resourcing levels will need to be increased. At least in the short term, considerable delays can be expected in the granting of approvals, leading to delays in infrastructure rollout.

The breadth of the drafting seems to have had unintended consequences. Senator Brown's position would be more readily understood if the classes of infrastructure of particular concern were more clearly identified in the drafting.

Comment 4: The deletion of clause 6(7) would be a significant backward step. The Low Impact Determination permits the extension of an existing tower by 5 metres, once only, in industrial and rural areas (but not in residential and commercial areas and areas of environmental significance). Any further tower extensions require statutory planning consent. Permitting once-off extensions of 5 metres allows carriers to better utilise existing towers in industrial and rural areas, and thereby reduces the need to build new structures. In fact, the ability to extend towers by 5 metres significantly contributes to Telstra's ability to provide improved coverage, capacity and call quality in a timely and cost effective manner. Further, because existing towers are typically between 20 metres to 30 metres in height, an extension of 5 metres has little visual impact from ground level. The ability to extend an existing tower enhances carriers' ability to use existing infrastructure efficiently. Therefore, losing this ability will have an adverse impact on both carriers and the community.

- (8) Paragraphs (1)(a), (c) and (d) do not, by implication, limit subclause (3).
- (9) A reference in this Part to engaging in activities under this Division includes a reference to exercising powers under this Division.
- (10) A determination under subclause (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 4—Maintenance of facilities

7 Maintenance of facilities

- (1) A carrier may, at any time, maintain a facility.
 - (2) A carrier may do anything necessary or desirable for the purpose of exercising powers under subclause (1), including (but not limited to):
 - (a) entering on, and occupying, land; and
 - (b) removing, or erecting a gate in, any fence.
 - (3) A reference in this clause to the *maintenance* of a facility (the *original facility*) includes a reference to:
 - (a) the alteration, removal or repair of the original facility; and
 - (b) the provisioning of the original facility with material or with information (whether in electronic form or otherwise); and
 - (c) ensuring the proper functioning of the original facility; and
 - (d) the replacement of the whole or a part of the original facility in its original location, where the conditions specified in subclause (5) are satisfied; and
 - (e) the installation of an additional facility in the same location as the original facility, where the conditions specified in subclause (6) are satisfied; and
 - (f) in a case where any tree, undergrowth or vegetation obstructs, or is likely to obstruct, the operation of the original facility—the cutting down or lopping of the tree, or the clearing or removal of the undergrowth or vegetation, as the case requires.
 - (4) A reference in this clause to the *maintenance* of a facility does not include a reference to the extension of a tower. For this purpose, *tower* has the same meaning as in clause 4.
- (4A) A reference in this clause to the *maintenance* of a facility does not include a reference to an activity that increases the electromagnetic radiation emitted by the facility.

Comment 5: The inherent functional purpose of all radiocommunications facilities is to emit electromagnetic radiation. These emissions are at specifically licensed frequencies and operate at power levels far below the Australian Standard.

When undertaking maintenance works, carriers are permitted to replace existing equipment with similar scale equipment. The Schedule 3 powers in connection with maintenance activities have permitted the orderly upgrade of existing equipment as technology changes. For the most part, replacement radio transmitters will not result in substantially increased electromagnetic emissions. However, increases in EME can occur, and should, in Telstra's opinion, be permitted within the scope of the maintenance power if the other conditions are satisfied.

If the EME profile of the site changes through a maintenance activity, under existing regulation carriers must nevertheless:

- comply with the *Radiocommunications Act 1997* (Cth) and the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003* and ensure, in all circumstances, that the general public is not exposed to EME levels contrary to the Australia Standard;
- prepare a new Environmental EME Report which will be uploaded onto the RF National Site Archive, as required by the Mobile Infrastructure Industry Code (and its successor); and
- notify the community in the manner prescribed by the Mobile Infrastructure Industry Code (and its successor).

The proposed exclusion of activities which result in an increase of EME from the definition of maintenance activities, gives rise to several additional concerns:

- The breadth of the exclusion. Literally, it seems that the repair of a radio antenna so that it is restored to full power is caught by the exclusion.
- If a carrier is unable to rely on the maintenance power in respect of activities that result in an increase in EME beyond the predictions for the original facility, it will need to obtain development approval for such works. To come within the maintenance power, the new facility must be of a similar size to the existing facility. The need to obtain town planning approvals to address the change in the EME profile is an unreasonably onerous measure in light of the fact that the Mobile Infrastructure Industry Code already regulates the change in the EME profile. In Telstra's view, limiting the definition of maintenance activity in this way has no particular community benefit in circumstances where this event is already the subject of regulation, and community notification is already provided for, in the Mobile Infrastructure Industry Code.

(5) For the purposes of paragraph (3)(d), the following conditions are specified:

- (a) the levels of noise that are likely to result from the operation of the replacement facility are less than or equal to the levels of noise that resulted from the operation of the original facility;
- (b) in a case where the original facility is a tower:
 - (i) the height of the replacement facility does not exceed the height of the original facility; and
 - (ii) the volume of the replacement facility does not exceed the volume of the original facility;
- (c) in a case where the facility is not a tower:

- (i) the volume of the replacement facility does not exceed the volume of the original facility; or
 - (ii) the replacement facility is located inside a fully-enclosed building, the original facility was located inside the building and the building is not modified externally as a result of the replacement of the original facility; or
 - (iii) the replacement facility is located inside a duct, pit, hole, tunnel or underground conduit;
 - (d) such other conditions (if any) as are specified in the regulations.
- (6) For the purposes of paragraph (3)(e), the following conditions are specified:
- (a) the combined levels of noise that are likely to result from the operation of the additional facility and the original facility are less than or equal to the levels of noise that resulted from the operation of the original facility;
 - (b) either:
 - (i) the additional facility is located inside a fully-enclosed building, the original facility is located inside the building and the building is not modified externally as a result of the installation of the additional facility; or
 - (ii) the additional facility is located inside a duct, pit, hole, tunnel or underground conduit;
 - (c) such other conditions (if any) as are specified in the regulations.
- (7) For the purposes of paragraphs (5)(a), (b) and (c) and (6)(a), (b) and (c), trivial variations are to be disregarded.
- (8) For the purposes of subclauses (5) and (6):
- (a) ~~the measurement of the height of a tower is not to include any antenna extending from the top of the tower~~ the measurement of the height of a tower is to include any antenna, aerial, dish or other attachment extending from the top of the tower; and

Comment 6: The tower structure should be treated separately from the telecommunications equipment mounted on it. The current regime already impose constraints on the size of replacement equipment that can be installed as a maintenance activity (see clause 7(5)(a),(c) and (6)(a)). This ensures that there are no non-trivial volumetric or noise increases resulting from the installation of replacement facilities. If the changes proposed are introduced, minor increases in height resulting from the replacement of old technology with upgraded equipment would need to be assessed for compliance with the relevant town planning scheme, and may be subject to the requirement to obtain planning approval.

The changes proposed would result in an unworkable regime whereby a large number of deployment and maintenance activities with respect to equipment on existing structures will be subject to delays and cost increases arising from the need to comply with State and Territory town planning processes.

- (b) the volume of a facility is the apparent volume of the materials that:
 - (i) constitute the facility; and
 - (ii) are visible from a point outside the facility; and
- (c) a structure that makes a facility inside the structure unable to be seen from any point outside the structure is to be treated as if it were a fully-enclosed building.

(9) A reference in this Part to engaging in activities under this Division includes a reference to exercising powers under this Division.

(10) In this clause (other than subclause (4)):

tower means a tower, pole or mast and includes any mounting piece, bracket, header, spacer, remote radio unit, antenna, dish, aerial or similar attachment.

Comment 7: See Comment 6.

This extended definition is probably superfluous given the restriction already proposed to be imposed by clause 7(8).

Division 5—Conditions relating to the carrying out of authorised activities

8 Carrier to do as little damage as practicable

In engaging in an activity under Division 2, 3 or 4, a carrier must take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as is practicable.

9 Carrier to restore land

- (1) If a carrier engages in an activity under Division 2, 3 or 4 in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition that is similar to its condition before the activity began.
- (2) The carrier must take all reasonable steps to ensure that the restoration begins within 10 business days after the completion of the first-mentioned activity.
- (3) The rule in subclause (2) does not apply if the carrier agrees with:
 - (a) the owner of the land; and
 - (b) if the land is occupied by a person other than the owner—the occupier; to commence restoration at a time after the end of that period of 10 business days.

10 Management of activities

A carrier must, in connection with carrying out an activity covered by Division 2, 3 or 4, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to ensure that the activity interferes as little as practicable with:
 - (i) the operations of a public utility; and
 - (ii) public roads and paths; and
 - (iii) the movement of traffic; and
 - (iv) the use of land; and
- (d) to protect the environment.

11 Agreements with public utilities

- (1) A carrier must make reasonable efforts to enter into an agreement with a public utility that makes provision for the manner in which the carrier will engage in an activity that is:
 - (a) covered by Division 2, 3 or 4; and
 - (b) likely to affect the operations of the utility.
- (2) A carrier must comply with an agreement in force under subclause (1).

12 Compliance with industry standards

If a carrier engages in an activity covered by Division 2, 3 or 4, the carrier must do so in accordance with any standard that:

- (a) relates to the activity; and
- (b) is recognised by the ACMA as a standard for use in that industry; and

- (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.

13 Compliance with international agreements

If a carrier engages in an activity covered by Division 2, 3 or 4, the carrier must do so in a manner that is consistent with Australia's obligations under a listed international agreement that is relevant to the activity.

14 Conditions specified in the regulations

If a carrier engages, or proposes to engage, in an activity covered by Division 2, 3 or 4, the carrier must comply with any conditions that are specified in the regulations.

15 Conditions specified in a Ministerial Code of Practice

- (1) The Minister ~~may~~must, 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 (other than activities covered by a facility installation permit) or by Part 3 of Schedule 3A.

(1A) Without limiting the conditions that may be set out in a Code of Practice, the Code of Practice must provide for:

- (a) notification and consultation requirements that apply to carriers, including notifying and consulting with owners and occupiers of land within 500 metres of any facility that will emit electromagnetic radiation; and
- (b) carriers to provide, as part of the notification process, full disclosure of plans for the facility being installed (including cumulative electromagnetic emission reports and the likelihood of co-locations and upgrades) and the reasons for the selection of the site (including technical reports, projected growth and assessment of other sites considered (if any)); and
- (c) a complaints process providing owners and occupiers within 500 metres of a facility that will emit electromagnetic radiation with the ability to make a complaint to the ACMA in relation to any or all of the following:
 - (i) the location of the facility;
 - (ii) compliance with the Code of Practice;
 - (iii) compliance with any relevant industry standard;and providing for any work relating to the installation of the facility to be suspended until the complaint is resolved.

Comment 8 Given that the Brown Bill proposes to restrict the low impact and maintenance powers to such a great extent, the expanded community consultation provisions intended for the Code of Practice may have little role to play.

Leaving that issue aside, essentially, these proposed changes to the Code of Practice would apply to:

- maintenance activities which involve the replacement of an existing radiocommunications facility with a new one; and
- the installation of a radio communications facility as a low-impact facility.

Telstra is concerned by the proposed changes for the following reasons:

- Given its scope, the change will impose a huge burden on carriers without necessarily addressing specific community concerns. Numerous households and business would need to be provided with extensive (and possibly unwelcome) information for a large range of activities ranging from the replacement of an existing low power micro cell with a similar facility, to the installation of an antenna on the roof of a three storey building.
- Even if no complaints are received, the requirement to notify so extensively will itself substantially delay the maintenance of the existing network and the development of an expanded network. Customer service requirements will not be able to be met.
- Because of the proposed repeal of the immunities carriers have from planning laws through the deletion of clause 37, the inclusion of these obligations in the Code of Practice means that carriers will be going through a double process of consultation as carriers work through both the local government planning process and the Code of Practice. In fact for mobile phone base stations, there may be a third level of consultation etc through the Mobile Infrastructure Industry Code. This will create huge inefficiencies for carriers, be extremely wasteful of resources and, Telstra expects, result in community confusion.
- It creates a new objection process as an alternative to the current objection process handled by the Telecommunications Industry Ombudsman. Senator Brown may not be aware of the objection resolution process already provided for in the Code of Practice and under the Mobile Infrastructure Industry Code; however, this system has been in place for 15 years and provides an efficient and independent resolution of complaints.
- Under the revised Mobile Infrastructure Industry Code, carriers are required to provide much of the information contemplated in proposed clause 15(1A), including information regarding site selection.
- It is not possible for a carrier to be able to provide information about future co-location plans of other carriers. However, co-location is encouraged in the land access scheme generally.

Finally, Telstra notes that its mobile network rollout is provided in response to customer demand. With the imposition of such onerous requirements, customer demand and community coverage expectations will not be met.

(2) A carrier must comply with the Code of Practice. imposition

(3) The following are examples of conditions that may be set out in the Code of Practice:

- (a) a condition requiring carriers to undertake assessments, or further assessments, of the environmental impact of the activity concerned;

- (b) a condition requiring carriers to consult a particular person or body in relation to the activity concerned;
 - (c) a condition requiring carriers to obtain the approval of a particular person or body in relation to the activity concerned.
- (4) This clause does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (5) This clause does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (6) Subclauses (4) and (5) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.
- (7) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

16 Conditions to which a facility installation permit is subject

If:

- (a) a carrier engages, or proposes to engage, in an activity covered by Division 3; and
 - (b) that activity is or will be authorised by a facility installation permit; and
 - (c) the facility installation permit is subject to one or more conditions;
- the carrier must comply with those conditions.

17 Notice to owner of land—general

- (1) Before engaging in an activity under Division 2, 3 or 4 in relation to any land, a carrier must give written notice of its intention to do so to:
- (a) the owner of the land; and
 - (b) if the land is occupied by a person other than the owner—the occupier; **and**
 - (c) if the activity relates to a facility in which electromagnetic radiation will be transmitted beyond the boundary of the land:**
 - (i) the owner of any land within 500 metres of the facility; and**
 - (ii) if any land within 500 metres of the facility is occupied by a person other than the owner of the land—the occupier.**

Comment 9:

These proposed changes to the notification provisions would apply to:

- maintenance activities which involve the replacement of an existing radiocommunications facility with a new one; and
- the installation of a radio communications facility as a low impact facility.

This would result in a huge compliance burden. It also provides a right to be notified in respect of the replacement/installation of radiocommunications facilities whose emissions in no way affect the notified land owner.

- (2) The notice must specify the purpose for which the carrier intends to engage in the activity.
- (3) The notice under subclause (1) must contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of anything done by a carrier in engaging in the activity, compensation may be payable under clause 42.
- (4) The notice must be given at least ~~10~~ 30 business days before the carrier begins to engage in the activity.

Comment 10: The increase of the notification period is across the board for all maintenance and all low impact facility installation activities, including underground cable installation, and the installation of, for example, cable markers, solar panels, pits and above ground housing.

For some projects, a 30 day notification period would be possible. However, for most jobs the imposition of a lengthy notification period would materially obstruct Telstra's ability to respond to customer demand and carry out standard network maintenance. Telstra carries out over 44,000 maintenance and low impact facility activities each year in reliance on the Telecommunications Act powers. Scheduling these around weather, project readiness, and staff and equipment availability is a considerable logistical challenge. However, Telstra is able to maintain, and even improve, its level of responsiveness because it is able to organise workflows with reasonable flexibility. An increased notification period will substantially impede this ability.

- (4A) Despite subclause (4), the notice need be given only 2 business days before the carrier begins to engage in an activity authorised by Division 2 (which deals with inspection) that:
 - (a) is not inconsistent with Australia's obligations under a listed international agreement; and
 - (b) could not have an effect described in one or more of subparagraphs 27(7)(a)(ii) to (xii) (inclusive) of this Schedule; and
 - (c) will not have an adverse effect on a streetscape or other landscape; and
 - (d) will not have an impact on a place, area or thing described in paragraph 27(7)(c) or (d) of this Schedule.
- (5) A person may waive the person's right to be given a notice under subclause (1).
- (6) Subclause (1) does not apply if:
 - (a) the carrier intends to engage in activities under Division 2 (which deals with inspection of land), 3 (which deals with installation of facilities) or 4 (which deals with maintenance); and
 - (b) those activities need to be carried out without delay in order to protect:
 - (i) the integrity of a telecommunications network or a facility; or
 - (ii) the health or safety of persons; or
 - (iii) the environment; or
 - (iv) property; or
 - (v) the maintenance of an adequate level of service.
- (6A) Subclause (1) does not apply if:
 - (a) the carrier intends to engage in an activity under Division 2, 3 or 4 in relation to the installation, proposed installation or maintenance of a temporary defence facility; and

- (b) the carrier considers that compliance with subclause (1) is impracticable in the circumstances.
- (6B) For the purposes of this clause, a *temporary defence facility* is a facility of the kind that is mentioned in paragraph 6(1)(c) of this Schedule.
- (7) Subclause (1) does not apply if the carrier intends to engage in an activity under Division 2 (which deals with inspection) in relation to land that is a public place and the activity:
 - (a) is not inconsistent with Australia's obligations under a listed international agreement; and
 - (b) could not have an effect described in one or more of subparagraphs 27(7)(a)(ii) to (xii) (inclusive) of this Schedule; and
 - (c) will not have an adverse effect on a streetscape or other landscape; and
 - (d) will not have an impact on a place, area or thing described in paragraph 27(7)(c) or (d) of this Schedule.

18 Notice to owner of land—lopping of trees etc.

- (1) At least 10 business days before engaging in any of the following activities under Division 2, 3 or 4:
 - (a) cutting down or lopping a tree on private land;
 - (b) clearing or removing undergrowth or vegetation on private land;
 a carrier must give:
 - (c) the owner of the land; and
 - (d) if the land is occupied by a person other than the owner—the occupier;

a written notice requesting that the tree be cut down or lopped, or that the undergrowth or vegetation be cleared, as the case may be, in the manner, and within the period, specified in the notice.
- (2) The carrier may only engage in those activities if the request is not complied with.
- (3) A person may waive the person's right to be given a notice under subclause (1).
- (3A) Subclauses (1) and (2) do not apply if:
 - (a) the carrier intends to engage in an activity under Division 2, 3 or 4 in relation to the installation, proposed installation or maintenance of a temporary defence facility; and
 - (b) the carrier considers that compliance with subclause (1) is impracticable in the circumstances.
- (3B) For the purposes of this clause, a *temporary defence facility* is a facility of the kind mentioned in paragraph 6(1)(c) of this Schedule.
- (4) Subclauses (1) and (2) do not apply if:
 - (a) the carrier intends to engage in activities under Division 2 (which deals with inspection of land), 3 (which deals with installation of facilities) or 4 (which deals with maintenance); and
 - (b) those activities need to be carried out without delay in order to protect:
 - (i) the integrity of a telecommunications network or a facility; or
 - (ii) the health or safety of persons; or
 - (iii) the environment; or
 - (iv) property; or
 - (v) the maintenance of an adequate level of service.

19 Notice to roads authorities, utilities etc.

- (1) At least 10 business days before engaging in any of the following activities under Division 3 or 4:
 - (a) closing, diverting or narrowing a road or bridge;
 - (b) installing a facility on, over or under a road or bridge;
 - (c) altering the position of a water, sewerage or gas main or pipe;
 - (d) altering the position of an electricity cable or wire;a carrier must give written notice of its intention to do so to the person or authority responsible for the care and management of the road, bridge, main, pipe, cable or wire.
- (2) A person or authority may waive the person's or authority's right to be given a notice under subclause (1).
- (2A) Subclause (1) does not apply if:
 - (a) the carrier intends to engage in an activity under Division 2, 3 or 4 in relation to the installation, proposed installation or maintenance of a temporary defence facility; and
 - (b) the carrier considers that compliance with subclause (1) is impracticable in the circumstances.
- (2B) For the purposes of this clause, a *temporary defence facility* is a facility of the kind mentioned in paragraph 6(1)(c) of this Schedule.
- (3) Subclause (1) does not apply if:
 - (a) the carrier intends to engage in activities under Division 2 (which deals with inspection of land), 3 (which deals with installation of facilities) or 4 (which deals with maintenance); and
 - (b) those activities need to be carried out without delay in order to protect:
 - (i) the integrity of a telecommunications network or a facility; or
 - (ii) the health or safety of persons; or
 - (iii) the environment; or
 - (iv) property; or
 - (v) the maintenance of an adequate level of service.

20 Roads etc. to remain open for passage

If a carrier engages in an activity covered by Division 3, the carrier must ensure that a facility installed over a road, bridge, path or navigable water is installed in a way that will allow reasonable passage by persons, vehicles and vessels.

Division 6—Facility installation permits

21 Application for facility installation permit

- (1) A carrier may apply to the ACMA for a permit authorising the carrier to carry out the installation of one or more facilities.
- (2) The permit is called a *facility installation permit*.

22 Form of application

An application must be:

- (a) in writing; and
- (b) in accordance with the form approved in writing by the ACMA.

23 Application to be accompanied by charge

An application for a facility installation permit must be accompanied by the charge (if any) fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005* in relation to so much of the ACMA's expenses in connection with dealing with the application as do not relate to the conduct of a public inquiry in relation to the permit.

24 Withdrawal of application

This Division does not prevent the withdrawal of an application and the submission of a fresh application.

25 Issue of facility installation permit

- (1) After considering the application, the ACMA may issue a facility installation permit authorising the applicant to carry out the installation of any or all of the facilities specified in the application.
- (2) The ACMA must not issue a facility installation permit unless the ACMA has held a public inquiry in relation to the permit.
- (3) The ACMA may decide to refuse to issue a facility installation permit without holding a public inquiry in relation to the permit.

Note: An example of the operation of this subclause would be a case where the application does not disclose grounds on which the ACMA could issue the permit.

- (4) If the ACMA decides to refuse to issue a facility installation permit, it must give the applicant a written notice setting out the decision.
- (5) Clause 23 does not prevent a charge from being fixed by a determination under section 60 of the *Australian Communications and Media Authority Act 2005* in relation to the holding of a public inquiry in relation to a permit.

26 Deemed refusal of facility installation permit

- (1) If:
 - (a) the ACMA receives an application for a facility installation permit; and
 - (b) 10 business days pass and the ACMA has neither:
 - (i) notified the applicant in writing that the ACMA has decided to refuse to issue the permit; nor

(ii) notified the applicant in writing that the ACMA has decided to hold a public inquiry in relation to the permit;
the ACMA is taken, at the end of that period of 10 business days, to have decided to refuse to issue the permit.

(2) If:

- (a) the ACMA receives an application for a facility installation permit; and
- (b) 65 business days pass and the ACMA has neither:
 - (i) notified the applicant in writing that the ACMA has decided to refuse to issue the permit; nor
 - (ii) notified the applicant in writing that the ACMA has decided to issue the permit;

the ACMA is taken, at the end of that period of 65 business days, to have decided to refuse to issue the permit.

(3) The ACMA may, by written instrument, determine that subclause (2) has effect, in relation to a specified application for a facility installation permit, as if a reference in that subclause to 65 business days were a reference to such greater number of business days, not exceeding 85 business days, as is specified in the determination. The determination has effect accordingly.

(4) In determining the validity of any action taken by the ACMA under Part 25 in relation to the holding of a public inquiry in relation to in a permit, regard must be had to the ACMA's need to act with sufficient speed to meet the time limit imposed by subclause (2).

27 Criteria for issue of facility installation permit

Criteria

- (1) The ACMA must not issue a facility installation permit that authorises a carrier to carry out the installation of one or more facilities unless the ACMA is satisfied that:
 - (a) the telecommunications network to which the facilities relate is, or is likely to be, of national significance; and
 - (b) the facilities are, or are likely to be, an important part of the telecommunications network to which the facilities relate; and
 - (c) any of the following conditions is satisfied:
 - (i) the greater part of the infrastructure of the telecommunications network to which the facilities relate has already been installed;
 - (ii) the greater part of the infrastructure of the telecommunications network to which the facilities relate has not been installed but each administrative authority whose approval was required or would, apart from Division 3, be required, for the installation of the greater part of the infrastructure of the network has given, or is reasonably likely to give, such approval;
 - (iii) no part of the infrastructure of the telecommunications network to which the facilities relate has been installed, but each administrative authority whose approval was required or would, apart from Division 3, be required, for the installation of the greater part of the infrastructure of the network has given, or is reasonably likely to give, such an approval; and
 - (d) the advantages that are likely to be derived from the operation of the facilities in the context of the telecommunications network to which the facilities relate outweigh any form of degradation of the environment that is likely to result from the installation of the facilities; and

(da) the precautionary principle has been taken into account in determining the site of the facility.

Comment 11: Facility installation permits (**FIPs**) essentially play no role in the telecommunications land access regime. No carrier has ever made an application for a FIP in the 14 year history of the Telecommunications Act.

However, given that a carrier would only seek a FIP in respect of a site that is truly essential with no viable alternatives, it is appropriate that the Act include a significant threshold in respect of the grant by ACMA of a FIP.

Comment 12: Telstra wonders why there is a reference to the precautionary principle with respect to FIPs. The Australian Standard incorporates the precautionary principle into the levels it sets for acceptable public and occupational exposure to EME. In complying with the Australian Standard, a carrier will have already built in an element of precaution to its design. It seems unnecessary to have further reference to the precautionary principle in the regulatory framework.

- (e) in a case where none of the facilities consists of a designated overhead line—the conditions set out in subclause (2) are satisfied; and
- (f) in a case where any of the facilities consists of a designated overhead line—all the conditions set out in subclause (2A) are satisfied; and
- (g) where the facility is proposed to be located near a community sensitive site, including residential areas, childcare centres, schools, aged care centres, hospitals, playgrounds and regional icons:
 - (i) the community has been fully consulted, and wherever possible, has agreed to the facility; and
 - (ii) alternative less sensitive sites have been considered and the ACMA certifies that no alternative site is technically feasible; and
 - (iii) the facility is not within 200 metres of a community sensitive site; and

Comment 13: Telstra submits that the imposition of an arbitrary distance from a "community sensitive site" (undefined) is undesirable from a policy perspective for the following reasons:

- Given that a FIP would only be sought in extreme circumstances, and ACMA's decision may be reviewed, it is inappropriate to limit ACMA's discretion by the imposition of this 200 metre restriction. If the reasons the site is sought are sufficient to justify a FIP on the other grounds, they may also be sufficiently compelling to permit the installation of a facility more proximate to a community sensitive site than 200 metres.
- Further, because a FIP can apply to any type of telecommunications facility, it is quite possible that the facility the subject of the FIP may have no impact at all on a "community sensitive site". For example, cable installation that is not a low impact facility (because it is an area of environmental significance) is likely to have no impact at all, on a school located 175 metres away.
- The imposition of arbitrary buffer zones is likely to impose sub-optimal decision making constraints on ACMA, which must be assumed to have considerable expertise in the area.

(iv) efforts have been made to minimise electromagnetic radiation exposure to the public.

Conditions relating to facilities other than designated overhead lines

- (2) For the purposes of paragraph (1)(e), the following conditions are specified:
- (a) the carrier has made reasonable efforts to negotiate in good faith with:
 - (i) each proprietor whose approval is required, or would, apart from Division 3, be required, for carrying out the installation; and
 - (ii) each administrative authority whose approval is required, or would, apart from Division 3, be required, for carrying out the installation; and
 - (b) one of the following subparagraphs applies:
 - (i) at least one approval that is referred to in subparagraph (a)(i) has not been obtained within 20 business days after the beginning of the negotiations concerned;
 - (ii) at least one approval that is referred to in subparagraph (a)(ii) has not been obtained within 6 months after the beginning of the negotiations concerned;
 - (iii) at least one approval that is referred to in paragraph (a) has been refused.

Conditions relating to facilities consisting of designated overhead lines

- (2A) For the purposes of paragraph (1)(f), the following conditions are specified:
- (a) the carrier has made reasonable efforts to negotiate in good faith with each proprietor whose approval is required, or would, apart from Division 3, be required, for carrying out the installation; and
 - (b) at least one of those approvals has not been obtained within 20 business days after the beginning of the negotiations concerned; and
 - (c) each administrative authority whose approval is required, or would, apart from Division 3, be required, for the installation of the line has given such an approval.

Networks of national significance

- (3) In determining the matter set out in paragraph (1)(a), the ACMA must have regard to the following:
- (a) the geographical reach of the network;
 - (b) the number of customers connected, or likely to be connected, to the network;
 - (c) the importance of the network to the national economy;
 - (d) such other matters (if any) as the ACMA considers relevant.

When facilities are an important part of a network

- (4) In determining the matter set out in paragraph (1)(b), the ACMA must have regard to at least one of the following:
- (a) the technical importance of the facilities in the context of the telecommunications network to which the facilities relate;
 - (b) the economic importance of the facilities in the context of the telecommunications network to which the facilities relate;
 - (c) the social importance of the facilities in the context of the telecommunications network to which the facilities relate.

(4A) The matter to which the ACMA must have regard in subclause (4) does not include the revenue, profit, market share or any financial interest of the carrier.

Comment 14

This amendment proposes that the ACMA have no regard to certain business or financial interests of the carriers, including Telstra.

Clause 27(4) directs the ACMA have regard to, amongst many other things, the "economic importance of the facilities in the context of the telecommunications network to which the facilities relate". The Bill seeks to insert a new clause, 27(4A), which would preclude the ACMA from having regard to the "revenue, profit, market share or any financial interest of a carrier" when forming view as to this matter.

However, carriers' financial interests and consideration of inter-carrier competition are factors that are relevant to some of the decisions the ACMA is to make under Schedule 3. In no instance are these matters determinative. The ACMA has a wide discretion and must have regard to a range of matters when making the decisions required under clause 27(1(b)) and clause 48(2) of Schedule 3. However, when making decisions that affect Telstra's business, Telstra submits that it is appropriate and necessary for the ACMA to be able to do so with an understanding of the business context of its decision making.

When advantages of facilities outweigh degradation of the environment

- (5) In determining the matter set out in paragraph (1)(d), the ACMA must have regard to the following:
- (a) the extent to which the installation of the facilities is likely to promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services;
 - (b) the impact of the installation, maintenance or operation of the facilities on the environment;

- (c) the objective of facilitating the timely supply of efficient, modern and cost-effective carriage services to the public;
- (d) any relevant technical and/or economic aspects of the installation, maintenance or operation of the facilities in the context of the telecommunications network to which the facilities relate;
- (e) whether the installation of the facilities contributes to the fulfilment by the applicant of the universal service obligation;
- (f) whether the installation of the facilities involves co-location with one or more other facilities;
- (g) whether the installation of the facilities facilitates co-location, or future co-location, with one or more other facilities;
- (h) such other matters (if any) as the ACMA considers relevant.

Long-term interests of end-users

- (6) For the purposes of this clause, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as that question is determined for the purposes of Part XIC of the *Trade Practices Act 1974*.

Environmental impact

- (7) In determining the matter set out in paragraph (5)(b), the ACMA must have regard to the following:
 - (a) whether the installation, maintenance or operation of the facilities:
 - (i) is inconsistent with Australia's obligations under a listed international agreement; or
 - (ii) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
 - (iii) could put a species of flora or fauna at risk of becoming a threatened species; or
 - (iv) could have an adverse effect on a threatened species of flora or fauna; or
 - (v) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or
 - (vi) could damage the whole or a part of a place, or an ecological community, that is essential to the continuing existence of a threatened species of flora or fauna; or
 - (vii) could threaten with extinction, or significantly impede the recovery of, a threatened ecological community; or
 - (viii) could have an adverse effect on a threatened ecological community; or
 - (ix) could damage the whole or a part of the habitat of a threatened ecological community; or
 - (x) could have an adverse effect on a listed migratory species (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or
 - (xi) will have or is likely to have a significant impact on the environment in a Commonwealth marine area (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or
 - (xii) will have or is likely to have a significant impact on the environment on Commonwealth land (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);
 - (b) the visual effect of the facilities on streetscapes and other landscapes;

- (c) whether the facilities are to be installed at any of the following places:
 - (i) a declared World Heritage property (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);
 - (ia) a declared Ramsar wetland (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);
 - (ii) a place that Australia is required to protect by the terms of a listed international agreement;
 - (iii) an area that, under a law of the Commonwealth, a State or a Territory, is reserved wholly or principally for nature conservation purposes (however described);
 - (iv) an area that, under a law of the Commonwealth, a State or a Territory, is protected from significant environmental disturbance;
- (d) whether the facilities are to be installed at or near an area or thing that is:
 - (i) included in the National Heritage List or Commonwealth Heritage List, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*; or
 - (ii) included in the Register of the National Estate, within the meaning of the *Australian Heritage Council Act 2003*; or
 - (iii) registered under a law of a State or Territory relating to heritage conservation; or
 - (iv) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions;
- (e) such other matters (if any) as the ACMA considers relevant.

Deemed approvals by administrative authorities

- (8) The ACMA may, by written instrument, determine that this clause has the effect it would have if it were assumed that a specified administrative authority had given a specified approval for the installation of one or more specified facilities. The determination has effect accordingly.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

Definitions

- (9) In this clause:

administrative authority means:

- (a) the holder of an office; or
- (b) an authority of a State or a Territory; or
- (c) a local government body;

performing administrative functions under a law of a State or a Territory.

approval means an approval or permission (however described).

negotiations includes:

- (a) the submission of an application for approval; and
- (b) pursuing an application for approval.

precautionary principle means that, if an activity may lead to serious harm, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or diminish that harm.

Comment 15: The Precautionary Principle is already addressed in the determinations of the Australian Standard and the mandated **Mobile Infrastructure Industry Code** (and its successor). The above definition implies that absolute scientific certainty is required or an action will fail the test. This is clearly at odds with the generally accepted definition.

proprietor means an owner or occupier of land.

review, in relation to a refusal to give an approval, means a review on the merits (in other words, a review that is not based on the grounds that the refusal is contrary to law).

telecommunications network includes a proposed telecommunications network.

28 Special provisions relating to environmental matters

- (1) Chapters 2 and 4 and Divisions 1 to 4 (inclusive) of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999* do not apply to:
 - (a) the performance of a function, or the exercise of a power, conferred on the ACMA by this Division; or
 - (b) an action (as defined in that Act) authorised by a facility installation permit.
- (2) Before issuing a facility installation permit, the ACMA must consult the Environment Secretary.
- (5) In this clause:

this Division includes:

 - (a) Part 25, to the extent that that Part relates to the holding of a public inquiry in relation to a permit; and
 - (b) Part 29, to the extent that that Part relates to this Division.

29 Consultation with the ACCC

Before making a decision to issue, or to refuse to issue, a facility installation permit, the ACMA must consult the ACCC.

30 Facility installation permit has effect subject to this Act

- (1) A facility installation permit has effect subject to this Act.
- (2) In this clause:

this Act includes the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act.

31 Duration of facility installation permit

- (1) A facility installation permit comes into force when it is issued and remains in force until the end of the period specified in the permit.
- (2) However, the ACMA may, by written notice given to the holder of a facility installation permit, extend the period specified in the permit if the ACMA is satisfied that the extension is warranted because of special circumstances.

32 Conditions of facility installation permit

- (1) A facility installation permit is subject to such conditions as are specified in the permit.
- (2) A condition of a facility installation permit may restrict, limit or prevent the carrying out of, an activity under Division 3. This subclause does not, by implication, limit subclause (1).
- (3) The following are examples of conditions to which a facility installation permit may be subject:
 - (a) a condition requiring the holder to undertake an assessment, or a further assessment, of the environmental impact of the installation of the facility concerned;
 - (b) a condition requiring the holder to consult a particular person or body in relation to the installation of the facility concerned;
 - (c) a condition requiring the holder to obtain the approval of a particular person or body in relation to the installation of the facility concerned.

33 Surrender of facility installation permit

The holder of a facility installation permit may, at any time, surrender the permit by written notice given to the ACMA.

34 Cancellation of facility installation permit

- (1) The ACMA may, by written notice given to the holder of a facility installation permit, cancel the permit.
- (2) In deciding whether to cancel the permit, the ACMA may have regard to:
 - (a) any contravention of Division 5; and
 - (b) any matter which the ACMA was entitled to have regard in deciding whether to issue a permit.
- (3) Subclause (2) does not, by implication, limit the matters to which the ACMA may have regard.

35 Review of decisions by Administrative Appeals Tribunal

(+) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the ACMA under clause 25 or 26. ~~to refuse to issue a facility installation permit if the ACMA has not held a public inquiry in relation to the permit.~~

- (2) If the ACMA:
 - (a) makes a decision of a kind covered by subclause (1); and
 - (b) gives to the person or persons whose interests are affected by the decision written notice of the making of the decision;that notice is to include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.
- (3) A failure to comply with subclause (2) does not affect the validity of a decision
- (4) In this clause:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Division 7— No exemption from State and Territory laws Exemptions from State and Territory laws

36 Activities not exempt from State and Territory laws ~~Activities not generally exempt from State and Territory laws~~

- (1) Divisions 2, 3 and 4 do not operate so as to authorise an activity to the extent that the carrying out of the activity would be inconsistent with the provisions of a law of a State or Territory.
- ~~(2) The rule set out in subclause (1) has effect subject to any exemptions that are applicable under clause 37.~~

37 Exemption from State and Territory laws

- ~~(1) This clause applies to an activity carried on by a carrier if the activity is authorised by Division 2, 3 or 4.~~
- ~~(2) The carrier may engage in the activity despite a law of a State or Territory about:~~
 - ~~(a) the assessment of the environmental effects of engaging in the activity; or~~
 - ~~(b) the protection of places or items of significance to Australia's natural or cultural heritage; or~~
 - ~~(c) town planning; or~~
 - ~~(d) the planning, design, siting, construction, alteration or removal of a structure; or~~
 - ~~(e) the powers and functions of a local government body; or~~
 - ~~(f) the use of land; or~~
 - ~~(g) tenancy; or~~
 - ~~(h) the supply of fuel or power, including the supply and distribution of extra-low voltage power systems; or~~
 - ~~(i) a matter specified in the regulations.~~
- ~~(3) Paragraph (2)(b) does not apply to a law in so far as the law provides for the protection of places or items of significance to the cultural heritage of Aboriginal persons or Torres Strait Islanders.~~
- ~~(4) Paragraph (2)(h) does not apply to a law in so far as the law deals with the supply of electricity at a voltage that exceeds that used for ordinary commercial or domestic requirements.~~

38 Concurrent operation of State and Territory laws

- ~~It is the intention of the Parliament that, if clause 37 entitles a carrier to engage in activities despite particular laws of a State or Territory, nothing in this Division is to affect the operation of any other law of a State or Territory, so far as that other law is capable of operating concurrently with this Act.~~

Comment 16: This proposal would undermine the telecommunications land access scheme almost completely. The scheme sets up an alternative framework for the rollout of facilities which are essential to maintaining telecommunications networks and are unlikely to cause community disruption during their installation or operation.

The scheme works because it is an alternative to the town planning processes which might otherwise apply. The Brown Bill proposes a duplicated process, where a carrier must comply with both schemes if it is to rely to any extent on the rights under the Telecommunications Act.

The immunity from State and Territory laws presently applies to all activities authorised by the telecommunications land access regime. Accordingly, repealing clause 37 would impact all aspects of the scheme. The Brown Bill in no way seeks to confine its impact to mobile base stations.

39 Liability to taxation not affected

This Division does not affect the liability of a carrier to taxation under a law of a State or Territory.

Division 8—Miscellaneous

41 Guidelines

- (1) In performing a function, or exercising a power, conferred on the ACMA by this Part, the ACMA must have regard to:
 - (a) any guidelines in force under subclause (2); and
 - (b) such other matters as the ACMA considers relevant.
- (2) The ACMA may, by written instrument, formulate guidelines for the purposes of subclause (1).

42 Compensation

- (1) If a person suffers financial loss or damage because of anything done by a carrier under Division 2, 3 or 4 in relation to:
 - (a) any property owned by the person; or
 - (b) any property in which the person has an interest;there is payable to the person by the carrier such reasonable amount of compensation:
 - (c) as is agreed between them; or
 - (d) failing agreement—as is determined by a court of competent jurisdiction.
- (2) Compensation payable under subclause (1) includes, without limitation, compensation in relation to:
 - (a) damage of a temporary character as well as of a permanent character; and
 - (b) the taking of sand, soil, stone, gravel, timber, water and other things.
- (3) In this clause:

court of competent jurisdiction, in relation to property, means:

- (a) the Federal Court; or
- (b) the Supreme Court of the State or Territory in which the property is situated or was situated at the time of the relevant loss or damage; or
- (c) an inferior court that has jurisdiction:
 - (i) for the recovery of debts up to an amount not less than the amount of compensation claimed by the person; and
 - (ii) in relation to the locality in which the property, or part of the property, is situated or was situated at the time of the relevant loss or damage.

inferior court means:

- (a) a County Court, District Court or local Court of a State or Territory; or
- (b) a court of summary jurisdiction exercising civil jurisdiction.

43 Power extends to carrier's employees etc.

If, under a provision of Division 2, 3 or 4, a carrier is empowered to:

- (a) enter on land; or
- (b) inspect land; or
- (c) occupy land; or
- (d) do anything else on, over or under land;

the provision also empowers:

- (e) an employee of the carrier; or
- (f) a person acting for the carrier under a contract; or

(g) an employee of a person referred to in paragraph (f);
to do that thing.

44 State and Territory laws that discriminate against carriers and users of carriage services

- (1) The following provisions have effect:
 - (a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;
 - (b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;
 - (c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally.
- (2) The following provisions have effect:
 - (a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally;
 - (b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally;
 - (c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular eligible user, against a particular class of eligible users, or against eligible users generally.
- (3) For the purposes of this clause, if a carriage service is, or is proposed to be, supplied to a person by means of a controlled network, or a controlled facility, of a carrier, the person is an *eligible user*.
- (4) The Minister may, by written instrument, exempt a specified law of a State or Territory from subclause (1).

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.
- (5) The Minister may, by written instrument, exempt a specified law of a State or Territory from subclause (2).

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.
- (6) An exemption under subclause (4) or (5) may be unconditional or subject to such conditions (if any) as are specified in the exemption.
- (7) An instrument under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: The following are examples of a law of a State or Territory:

- (a) a provision of a State or Territory Act;
- (b) a provision of a legislative instrument made under a State or Territory Act.

45 State and Territory laws may confer powers and immunities on carriers

It is the intention of the Parliament that this Part is not to be construed as preventing a law of a State or Territory from conferring powers or immunities on carriers, so long as that law is capable of operating concurrently with this Act.

46 ACMA may limit tort liability in relation to the supply of certain carriage services

- (1) The ACMA may, by written instrument, impose limits on amounts recoverable in tort in relation to acts done, or omissions made, in relation to the supply of specified carriage services.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) An instrument under subclause (1) has effect accordingly.
- (3) A limit imposed by an instrument under subclause (1) may be expressed to apply in relation to:
 - (a) the total of the amounts that can be recovered in relation to a single event; or
 - (b) the total of the amounts that can be recovered by a particular plaintiff in relation to a single event.
- (4) An instrument under subclause (1) may impose a limit expressed as:
 - (a) a dollar amount; or
 - (b) a method of calculating an amount.
- (5) Subclauses (3) and (4) do not, by implication, limit subclause (1).
- (6) This clause does not apply to a cause of action under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with the customer service guarantee).
- (7) This clause does not apply to a cause of action under clause 42 (which deals with compensation for loss or damage resulting from a carrier's activities under Division 2, 3 or 4).
- (8) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

47 Ownership of facilities

Unless the circumstances indicate otherwise, a facility, or a part of a facility, that is supplied, installed, maintained or operated by a carrier remains the property of its owner:

- (a) in any case—whether or not it has become (either in whole or in part), a fixture; and
- (b) in the case of a network unit—whether or not a nominated carrier declaration is in force in relation to the network unit.

48 ACMA may inform the public about designated overhead lines, telecommunications transmission towers and underground facilities

- (1) The ACMA may inform members of the public about the kinds and location of:
 - (a) designated overhead lines; and

- (b) telecommunications transmission towers, including electromagnetic emissions exposure maps; and

Comment 17: The public already have access to the EME reports for all licensed radiocommunications, including proposed new sites and upgrades to existing sites, through the Radio Frequency National Site Archive.

- (c) underground facilities.

- (2) In performing the function conferred on the ACMA by subclause (1), the ACMA must have regard to the following matters:

- (a) if:

- (i) the ACMA is satisfied that a body or association represents carriers; and
- (ii) the body or association has given the ACMA a written statement setting out the body's or association's views about how the ACMA should perform that function;

the views set out in the statement;

- (b) the legitimate business interests of carriers, other than matters relating to competition between carriers;

Comment 18: It is unclear why inter-carrier competition should not be treated as a legitimate business interest of carriers.

- (c) the objective of safeguarding national security;
- (d) the privacy of end-users of carriage services supplied by means of the lines, towers or facilities concerned.

(e) the public interest in a proper understanding of electromagnetic radiation levels and the application of the precautionary principle.

Comment 19: We note that the ACMA, ARPANSA and the carriers already provides information regarding EME to the public. We do not consider that it is appropriate to legislate this responsibility in this context.

Comment 20: It is not clear why there is a reference to the precautionary principle at this point. It is embodied in the Australian Standard and referred to in the Mobile Infrastructure Industry Code.

- (3) Subclause (2) does not, by implication, limit the matters to which the ACMA may have regard.

- (4) Clauses 40 and 41 do not apply to the function conferred on the ACMA by subclause (1).

(5) In this clause:

precautionary principle means that, if an activity may lead to serious harm, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or diminish that harm.

Comment 21: The Australian Standard already embraces the precautionary principle. See Comment 15.

telecommunications transmission tower means:

- (a) a tower; or
- (b) a pole; or
- (c) a mast; or
- (d) a similar structure;

used to supply a carriage service by means of radiocommunications.

48A Local Telecommunications Network Plans

- (1) A carrier must, within 3 months after the end of each financial year, prepare a plan (a *Local Telecommunications Network Plan*) detailing the carrier's proposed telecommunications network layout for the next 5 years.
- (2) A copy of the Local Telecommunications Network Plan must be provided to the ACMA and relevant local government bodies.

Comment 22: The scope of this clause in terms of facilities type and the onerous nature of the obligations it imposes, makes it completely unworkable.

This clause applies to all telecommunications network facilities – cabling, trunk radio, and mobile network. It requires an annual assessment by carriers of its plans for the coming five years for each local government area across Australia. This raises a number of significant concerns:

- the gargantuan nature of the task;
- the inability of carriers to make accurate forecasts for the next 5 years in advance, which renders the plan largely pointless; and
- the dubious usefulness of the information provided, even if it is accurate.

Certainly, by no measure would the benefit to local government/communities be commensurate with the effort required on the part of carriers to prepare these plans.

Further concerns:

- Carrier plans for extending mobile coverage are dynamic, subject to amended funding availability and do not extend beyond a practical 2-3 year horizon.
- “Infill” facilities are required when and if it is demonstrated that a part of the network is suffering congestion. The carriers cannot reliably predict where the customers will require increased capacity beyond the current planning visibility of 2-3 years.
- The Mobile Infrastructure Industry Code already requires carriers to consult as to future plans in connection with mobile base stations with relevant local governments, although not to the unworkable extent that is proposed in the Brown Bill. The need for communication between carriers and relevant local councils has therefore already been addressed by carrier self-regulation.
- Newly proposed wireless facilities can be identified via a local search on the RFNSA.

49 Review of options for placing facilities underground

- (1) Before 1 July 1998, the Minister must cause to be conducted a review of the options for placing facilities underground.
- (2) Those options are to include options for placing facilities underground as part of a co-ordinated program of placing other infrastructure underground (for example, electricity transmission and distribution infrastructure).
- (3) The Minister must cause to be prepared a report of the review.
- (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

50 Monitoring of progress in relation to placing facilities underground

The ACMA is to monitor, and report to the Minister on, progress in relation to the implementation of efforts to place facilities underground.

51 Removal of certain overhead lines

(1) If:

- (a) an overhead line (the *eligible overhead line*) is attached to a pole (the *first pole*); and
- (b) the eligible overhead line, or a portion of the eligible overhead line, is suspended between the first pole and another pole (the *second pole*); and
- (c) the installation of the eligible overhead line was or is authorised by:
 - (i) this Act; or
 - (ii) section 116 of the *Telecommunications Act 1991*; or
 - (iii) Division 3 of Part 7 of the *Telecommunications Act 1991*; or
 - (iv) a repealed law of the Commonwealth; and
- (d) there is also attached to the first pole one or more other overhead cables, where at least one of the other overhead cables is a non-communications cable; and
- (e) each of the non-communications cables is permanently removed (either simultaneously or over a period) and is not replaced;

the owner of the eligible overhead line must, within 6 months after the completion of the last of the removals referred to in paragraph (e), permanently remove so much of the eligible overhead line as is suspended between the first pole and the second pole.

(2) If:

- (a) there is a local government body for the area in which the first pole is situated; and
- (b) there is no prescribed administrative authority for the State or Territory in which the first pole is situated;

the local government body may, by writing:

- (c) exempt the owner of the eligible overhead line from compliance with subclause (1) in relation to the first pole; or
- (d) extend the period of 6 months mentioned in subclause (1) for the purposes of the application of subclause (1) to the owner of the eligible overhead line and to the first pole.

(3) If there is a prescribed administrative authority for the State or Territory in which the first pole is situated, the prescribed administrative authority may, by writing:

- (a) exempt the owner of the eligible overhead line from compliance with subclause (1) in relation to the first pole; or
- (b) extend the period of 6 months mentioned in subclause (1) for the purposes of the application of subclause (1) to the owner of the eligible overhead line and to the first pole.

(4) If:

- (a) there is no local government body for the area in which the first pole is situated; and
- (b) there is no prescribed administrative authority for the State or Territory in which the first pole is situated;

the regulations may make provision for and in relation to:

- (c) the exemption of the owner of the eligible overhead line from compliance with subclause (1) in relation to the first pole; and
- (d) the extension of the period of 6 months mentioned in subclause (1) for the purposes of the application of subclause (1) to the owner of the eligible overhead line and to the first pole.

- (5) Regulations made for the purposes of subclause (4) may make provision with respect to a matter by conferring a power on the ACMA.
- (6) This clause does not prevent 2 or more instruments under subclause (2) or (3) from being combined in the same document.
- (7) In this clause:

administrative authority means:

- (a) the holder of an office; or
 - (b) an authority of a State or a Territory;
- that performs administrative functions under a law of a State or a Territory.

line includes a disused line.

non-communications cable means an overhead cable (other than a line).

overhead cable means a wire or cable that is suspended above the surface of:

- (a) land (other than submerged land); or
- (b) a river, lake, tidal inlet, bay, estuary, harbour or other body of water.

overhead line means a line that is suspended above the surface of:

- (a) land (other than submerged land); or
- (b) a river, lake, tidal inlet, bay, estuary, harbour or other body of water.

prescribed administrative authority, in relation to a State or a Territory, means an administrative authority that:

- (a) performs administrative functions under a law of the State or the Territory; and
- (b) is specified in the regulations.

52 Commonwealth laws not displaced

Divisions 2, 3 and 4 do not authorise a carrier to engage in an activity contrary to the requirements of another law of the Commonwealth.

53 Subdivider to pay for necessary alterations

If:

- (a) it becomes necessary, in the opinion of a carrier, because of the subdivision of any land, to remove, or alter the position of, a facility on, over or under the land; and
- (b) the carrier incurs costs in connection with anything reasonably done in connection with the removal or alteration;

the person who subdivided the land is liable to pay to the carrier so much of those costs as is reasonable, and that amount may be recovered in a court of competent jurisdiction as a debt due to the carrier.

54 Service of notices

(1) If:

- (a) a carrier is unable, after diligent inquiry, to find out who owns particular land; or
- (b) a carrier is unable to serve a notice under this Part on the owner of land either personally or by post;

the carrier may serve a notice under this Part on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:

- (c) if the land is occupied—serving a copy of the notice on the occupier; or
 - (d) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (2) If a carrier is unable, after diligent inquiry, to find out:
- (a) whether particular land is occupied; or
 - (b) who occupies particular land;
- the carrier may treat the land as unoccupied land.
- (3) If a carrier is unable to serve a notice under this Part on the occupier of land either personally or by post, the carrier may serve a notice under this Part on the occupier by:
- (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is situated; and
 - (b) attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (4) This clause does not affect the operation of any other law of the Commonwealth, or of any law of a State or Territory, that authorises the service of a document otherwise than as provided in this clause.

55 Facilities installed before 1 January 2001 otherwise than in reliance on Commonwealth laws—environmental impact

- (1) This clause applies if:
- (a) a carrier, for purposes connected with the supply of a carriage service, proposes to commence to carry out the installation of a facility before 1 January 2001; and
 - (b) neither Division 3 of this Part, nor Part 7 of the *Telecommunications Act 1991*, will operate so as to authorise the carrying out of the installation; and
 - (c) any of the conditions set out in subclause (2) is satisfied.
- (2) For the purposes of paragraph (1)(c), the following conditions are specified:
- (a) the carrying out of the installation:
 - (i) is, or is likely to be, inconsistent with Australia's obligations under a listed international agreement; or
 - (ii) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
 - (iii) could put a species of flora or fauna at risk of becoming a threatened species; or
 - (iv) could have an adverse effect on a threatened species of flora or fauna; or
 - (v) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or
 - (vi) could damage the whole or a part of a place, or an ecological community, that is essential to the continuing existence of a threatened species of flora or fauna; or
 - (vii) could threaten with extinction, or significantly impede the recovery of, a threatened ecological community; or
 - (viii) could have an adverse effect on a threatened ecological community; or
 - (ix) could damage the whole or a part of the habitat of a threatened ecological community; or
 - (x) could have an adverse effect on a listed migratory species (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or

- (xi) will have or is likely to have a significant impact on the environment in a Commonwealth marine area (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*); or
 - (xii) will have or is likely to have a significant impact on the environment on Commonwealth land (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);
 - (b) the installation is to be carried out at any of the following places:
 - (i) a declared World Heritage property (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);
 - (ia) a declared Ramsar wetland (as defined in the *Environment Protection and Biodiversity Conservation Act 1999*);
 - (ii) a place that Australia is required to protect by the terms of a listed international agreement;
 - (iii) an area that, under a law of the Commonwealth, is reserved wholly or principally for nature conservation purposes (however described);
 - (iv) an area that, under a law of the Commonwealth, is protected from significant environmental disturbance;
 - (c) the installation is to be carried out at or near an area or thing that is:
 - (i) entered in the Register of the National Estate; or
 - (ii) entered in the Interim List for that Register; or
 - (iii) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.
- (3) At least 25 business days before commencing to carry out the installation, the carrier must give the Environment Secretary written notice of the carrier's intention to do so.
- (4) The notice must be accompanied by a written statement setting out such information about the environmental impact of:
- (a) the carrying out of the installation; and
 - (b) the facility;
- as is specified in the regulations.
- (5) Within 25 business days after the notice was given, the ACMA may give the carrier a written direction requiring the carrier to do, or to refrain from doing, a specified act or thing in relation to:
- (a) the carrying out of the installation; or
 - (b) the facility;
- or both.
- (6) A carrier must comply with a direction under subclause (5).
- (7) A direction under subclause (5) may only be given for purposes relating to the environmental impact of:
- (a) the carrying out of the installation; or
 - (b) the facility;
- or both.
- (8) The ACMA must not give a direction under subclause (5) unless the Environment Secretary has given the ACMA a recommendation under subclause (9).
- (9) The Environment Secretary may give the ACMA a written recommendation to give a direction under subclause (5).
- (10) In giving a direction under subclause (5), the ACMA:

- (a) is not required to give a direction in the same terms as the Environment Secretary's recommendation; and
 - (b) may have regard to matters other than the Environment Secretary's recommendation.
- (11) The ACMA must consult the Australian Heritage Commission before giving a direction under subclause (5) if the condition specified in paragraph (2)(c) is satisfied.
- (12) In this clause:
- environmental impact* includes impact on heritage values.

Part 2—Transitional provisions

60 Existing buildings, structures and facilities—application of State and Territory laws

A law of a State or Territory that relates to:

- (a) the standards applicable to:
 - (i) the design; or
 - (ii) the manner of the construction;
of a building, structure or facility; or
- (b) the approval of the construction of a building, structure or facility; or
- (c) the occupancy, or use, of a building, structure or facility; or
- (d) the alteration or demolition of a building, structure or facility;

does not apply to a building, structure or facility that is owned or operated by a carrier to the extent that the construction, alteration or demolition of the building, structure or facility was or is authorised by:

- (e) section 116 of the *Telecommunications Act 1991*; or
- (f) Division 3 of Part 7 of the *Telecommunications Act 1991*; or
- (g) a repealed law of the Commonwealth.

61 Existing buildings, structures and facilities—application of the common law

A rule of the common law that relates to trespass does not apply to the continued existence of a building, structure or facility that is owned or operated by a carrier to the extent that the construction or alteration of the building, structure or facility was or is authorised by:

- (a) section 116 of the *Telecommunications Act 1991*; or
- (b) Division 3 of Part 7 of the *Telecommunications Act 1991*; or
- (c) a repealed law of the Commonwealth.

Part 3—Compensation for acquisition of property

62 Compensation for acquisition of property

- (1) If:
- (a) either of the following would result in an acquisition of property from a person:
 - (i) anything done by a carrier under, or because of, this Schedule;
 - (ii) the existence of rights conferred on a carrier under, or because of, this Schedule in relation to a building, structure or facility owned or operated by the carrier; and
 - (b) the acquisition of property would not be valid, apart from this clause, because a particular person had not been compensated;
- the carrier must pay that person:
- (c) a reasonable amount of compensation agreed on between the person and the carrier; or
 - (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.
- (2) In assessing compensation payable under this clause arising out of an event, the following must be taken into account:
- (a) any compensation obtained by the person as a result of an agreement between the person and the carrier otherwise than under this clause but arising out of the same event;
 - (b) any damages or compensation recovered by the person from the carrier, or other remedy given, in a proceeding begun otherwise than under this clause but arising out of the same event.
- (3) This clause does not limit the operation of clause 42.
- (4) In this clause:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

63 Application of this Part

This Part applies in relation to:

- (a) anything done by a carrier under, or because of, this Schedule after the commencement of Schedule 2 to the *Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005*; and
- (b) the existence of rights:
 - (i) in relation to a building, structure or facility owned or operated by a carrier; and
 - (ii) that are conferred on a carrier under, or because of, this Schedule on or after the commencement of Schedule 2 to the *Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005*.