

Damage to infrastructure or property

Complaints we receive involving damage to infrastructure or property include:

- a person disputes a carrier's claim for costs relating to damage caused to its infrastructure
- a person claims a carrier or provider damaged their property.

In this position statement, **infrastructure** refers to the cables and equipment required for telecommunications services to connect and transmit to other services. A **carrier** is a telecommunications provider that holds a carrier licence. The licence gives the carrier certain powers under the Telecommunications Act 1997.

As set out in the TIO Terms of Reference, we handle complaints about damage to a person's property by a carrier when accessing or using the land under its statutory rights or under a contract if the person making the complaint is the owner or occupier of the land. We also handle complaints about damage to a person's property by a provider when supplying or repairing a telecommunications service, if the person making the complaint is the end user of the telecommunications service or a person or business directly affected by the service.

We usually will not handle complaints about damage caused to property when the carrier was undertaking work as a result of a statutory notice issued to an unrelated third party, for example when a carrier is working on a local council owned nature strip or verge in front of the property.

Laws, codes, and guidelines

The following laws, codes, and guidelines are relevant to damage to infrastructure or property:

- Criminal Code Act 1995
- Schedule 3 of the Telecommunications Act 1997
- Telecommunications Code of Practice 1997
- The common law tort of negligence
- State regulations for safe excavation
- Installation requirements for Customer Cabling (Wiring Rules) 2013
- Information from the Dial Before You Dig website, including:
 - Members guide to supplying GIS data 2010
 - service guidelines for Victoria and Tasmania

This position statement provides broad guidance on the law, good industry practice, and what the TIO may consider to be fair and reasonable in general circumstances. It is not a full statement of the law or good industry practice. The TIO considers each matter brought to it on its own particular merits.

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Our approach

When we deal with complaints involving damage to infrastructure or property we consider the law, good industry practice, and fairness in all the circumstances.

Damage to carrier infrastructure by a person

The law

Under statute and common law when a person fails to meet a duty to take reasonable steps to avoid causing foreseeable harm they may be liable to pay for any resulting damage.

A carrier has obligations to install and maintain infrastructure in accordance with applicable legislation and industry standards. When exercising its powers under the [Telecommunications Act](#) a carrier must also act in accordance with good engineering practice.

A person has a duty of care to take reasonable steps to avoid damaging underground infrastructure when conducting excavation activities.

Intentional damage or tampering with a carrier's infrastructure is an offence under the [Criminal Code Act](#). The TIO will not handle a complaint about criminal liability involving intentional damage to a carrier's infrastructure.

Good industry practice

Carriers should install and maintain infrastructure in accordance with all applicable industry codes, and follow relevant industry guidelines.

Current industry practice is that a carrier that owns infrastructure becomes a member of [Dial Before You Dig](#). **Dial Before You Dig** is a referral service established by underground asset owners to help individuals contemplating excavation work on land by giving information on safely identifying and locating underground assets anywhere in Australia. Dial Before You Dig recommends that its members take certain actions to protect their infrastructure from damage, including:

- creating their own process to keep information held by Dial Before You Dig about their assets up

to date. This should be a standard scheduled task

- keeping their own site plans which clearly identify where assets are located
- when notified that an individual intends to undertake excavation in a member's area of interest, responding to the individual within two business days. The most common method of responding is by issuing site plans, by email, fax or post, however members may elect to respond differently depending on the nature of the enquiry, for example by phone or an on-site visit.

TIO view

A person should use the Dial Before You Dig service before starting any excavation activity.

When a person fails to take reasonable steps to protect infrastructure, and consequently damages it, the carrier is entitled to seek recovery of the costs of repair to current standards. The costs should be reasonable in the circumstances. The carrier should not charge for any additional work incidental to the damage that it may complete at the same time.

Damage to property by a carrier or provider

The law

Schedule 3 of the [Telecommunications Act](#) allows carriers to enter land to carry out certain activities, including:

- inspecting land to determine if it is suitable for the carrier's purposes
- surveying or obtaining information in relation to any land that, in the carrier's opinion, is or may be suitable for its purposes
- installing a facility in certain circumstances
- maintaining a facility already installed.

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When engaging in any of these activities 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
- the land is restored to a condition that is similar to its condition before the activity began
- the restoration begins within 10 business days after the completion of the activity, unless the carrier agrees with the owner or occupier of the land to start the restoration after the 10 business days.

The carrier must also take all reasonable steps to:

- act in accordance with good engineering practice
- protect the safety of persons and property
- ensure that the activity interferes as little as practicable with:
 - the operations of a public utility
 - public roads and paths
 - the movement of traffic
 - the use of land
- protect the environment.

Good industry practice

A provider should install and maintain infrastructure in accordance with all applicable industry codes, and follow relevant industry guidelines, for example, the [Wiring Rules](#).

TIO view

When exercising powers under the [Telecommunications Act](#) or undertaking work by invitation, a carrier or provider should repair all damage it causes to a property except for alterations essential for the operation of installed infrastructure. An example of an alteration essential for the operation of infrastructure is a hole drilled through an external wall to install a conduit.

When installing or maintaining infrastructure by invitation, a carrier or provider should take all reasonable steps to act in accordance with good engineering practice and protect the safety of persons and property. When assessing good engineering practice we will consider all applicable codes and guidelines.

When infrastructure is relocated because it had been previously installed incorrectly, including at the wrong location, the carrier or provider should repair any damage:

- at the original site of the infrastructure, and
- caused by the incorrect installation.

Dealing with a dispute

Damage to infrastructure by a person

To assess a complaint involving damage to infrastructure we may ask for information from the person making the complaint and carrier, including:

- What is the damage?
- Who caused the damage?
- What steps were taken to prevent damage?
- Was the party who caused the damage negligent?
- Did the carrier or provider contribute to the negligence in any way?
- What are the costs of repairing the damage?

We may also ask for supporting information including photographs of the damage.

Damage to property by a carrier or provider

To assess a complaint involving damage to property we may ask for information from the person making the complaint and carrier or provider, including:

- What is the damage?
- Who caused the damage?
- What are the costs of repairing the damage?

We may also ask for supporting information including photographs of the damage.

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Outcomes

Damage to infrastructure by a person

When, in our view, a person is responsible for damage to a carrier's infrastructure, the carrier may charge for the repair of the infrastructure to the carrier's current standards.

When, in our view, the carrier contributed to the damage, the carrier may be required to reduce the repair charges.

Damage to property by a carrier or provider

When, in our view, a carrier or provider has caused damage to a property, the carrier or provider should repair the damage at no charge, or address any detriment experienced because of the damage, including paying compensation.

Effective date: 11 March 2016

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