

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

Guidelines on the Installation and Maintenance of Low-Impact Facilities

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A message from the Ombudsman

Telecommunications carriers build infrastructure to serve current and future needs of customers and the community. To help them do this, carriers have been given powers and immunities to install and maintain a range of facilities on land without the permission from the land owner/occupier, and without the need to seek state or territory planning approval. Carriers are required to comply with a number of laws and codes when exercising these powers.

These land access powers are an important part of a broader regulatory framework with the purpose of ensuring long-term interests of end-users of telco services and the availability of accessible and affordable services that enhance the welfare of Australians.

The TIO has a role in resolving and adjudicating some land access disputes between carriers and land owners/occupiers – particularly those that concern the installation of low-impact facilities, land inspections and facility maintenance. We have had this role since our establishment in 1993. Under current law, carriers are required to refer unresolved land access objections to the TIO when requested by the land owner/occupier, and carriers must comply with any resulting TIO directions. In the last 20 years, we have handled more than 250 of these objections.

This Guide is written to help both carriers and land owners/occupiers better understand the land access process, as well as each other's rights. While it is not a substitute for legal advice, we think it is a handy reference for carriers who are thinking about accessing land, and for land owners/occupiers who are approached about proposed land activities.

Since the Guide was first published in April 2015, telco industry best practices – along with technology and community expectations – continue to evolve. We have also received valuable feedback from carriers and land owner/occupiers about how they use the Guide. This second edition has been expanded to include information about some recent developments and issues that we are often asked about. For example:

- A carrier's powers to maintain facilities, including the implications of *NBN Co v PIPE Networks* [2015] NSWSC 475 concerning a carrier's ability to connect a facility to a building's power supply and draw electricity;
- The TIO's expectations when a land owner/occupier claims that there are conflicting laws which overrides a carrier's power to access land; and
- The TIO's role after it has dealt with a matter, and allegations that a party has not complied with the TIO's direction.

With Australia Post's introduction of new domestic letter options and the increased reliance on email as a timely method to deliver important documents, this edition of the Guide also clarifies the TIO's view on giving and responding to land access related notices in the modern context.

We trust you find this updated Guide a useful resource when dealing with land access matters.

Judi Jones
Ombudsman
May 2018

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1 Overview

1.1 What is this Guide about?

This Guide is designed to help owners and occupiers of land (“**Land owners/occupiers**”) and telecommunications carriers (“**Carriers**”) to understand their rights and responsibilities when a Carrier wants to access land in relation to Low-Impact Facilities. Low-Impact Facilities are specific types of telecommunication infrastructure and equipment set out in the *Telecommunications (Low-impact Facilities) Determination 2018* (Cth) (the **Determination**) (see Part 3 of this Guide). This Guide primarily deals with the installation of Low-Impact Facilities, but similar processes also exist for the inspection of land and maintenance of facilities once installed (see Part 7 of this Guide).

Schedule 3 of the *Telecommunications Act 1997* (Cth) (the “**Act**”) and the *Telecommunications Code of Practice 2018* (the “**Code**”) set out a process (the “**Land Access Process**”) that allows the Carrier to install Low-Impact Facilities without the consent of the Land owners/occupiers, and without obtaining State, Territory or local government approvals. The main responsibilities of Carriers under the Land Access Process are to notify the Land owners/occupiers in advance and make reasonable efforts to consult with a Land owner/occupier about the activities if they object to the activities.

Land owners/occupiers can object to the proposed installation of Low-Impact Facilities on certain grounds, and within certain timeframes. If a Land owner/occupier and the Carrier are unable to resolve these objections by agreement, the Land owner/occupier can ask the Carrier to refer the issue to the TIO.

The summary in section 1.3 of this Guide provides an overview of the entire Land Access Process, and the TIO recommends reading that summary before other parts of this Guide.

1.2 What is not covered by this Guide?

This Guide is only about the Land Access Process.

Land owners/occupiers may have land-related complaints about their dealings with Carriers that do not fall under the Land Access Process, for example:

- disputes about a Carrier’s access to land under a private access agreement (including access at the Land owner/occupier’s request);
- complaints that a Carrier has installed facilities on land without following the Land Access Process; and
- emergency land access (see section 1.4).

These issues are not covered by this Guide. However, the TIO has a general role as an industry-based dispute resolution service, and may be able to assist to resolve land-related complaints. See Part 8 of this Guide on how to contact the TIO for more information.

1.3 Summary of the Land Access Process (including key dates)

The Land Access Process consists of up to four key stages, depending on whether an objection is referred to the TIO for decision. The entire process may not apply in every case.

Carriers often reach agreement with Land owners/occupiers in relation to accessing land, rather than using their statutory rights under the Land Access Process.

The four stages of the Land Access Process are summarised below and described in more detail in Part 5 of this Guide.

This summary describes the process for the installation of Low-Impact Facilities. Similar processes also exist for the inspection of land and maintenance of facilities once installed (see Part 7 of this Guide).

| | |
|--|---|
| <p>Stage 1 – Carrier’s notice of proposed activities</p> <ul style="list-style-type: none">• The Carrier gives Land owners/occupiers a written notice (the “Notice”) indicating that the Carrier intends to exercise its statutory rights to access the land under the Land Access Process (see section 5.1 for information about Notices).• The Notice must specify the proposed start date for the activities (the “Proposed Start Date”). The Notice must be given <u>at least 10 business days</u> before the Proposed Start Date. | <p>Timeline – Notice and Objection:</p> <p><u>Proposed Start Date</u></p> <p>10 business days before: <u>Notice of proposed activities</u></p> <p>9 business days before</p> <p>8 business days before</p> <p>7 business days before</p> <p>6 business days before</p> <p>5 business days before: <u>Deadline for notifying Objection</u></p> <p>4 business days before</p> <p>3 business days before</p> <p>2 business days before</p> <p>1 business day before</p> |
| <p>Stage 2 – Objection by Land owner/occupier</p> <ul style="list-style-type: none">• If a Land owner/occupier has any valid objection, written reasons and details (the “Objection”) must be given to the Carrier <u>at least 5 business days</u> before the Proposed Start Date.• Once the Carrier receives the Objection, move to Stage 3 (on the next page). | |

Stage 3 – Consultation Period

- The Land owner/occupier and Carrier have 20 business days (starting when the Carrier receives the Objection) to discuss the Objection and try to resolve it (the “**Consultation Period**”). During this period the Carrier must make reasonable efforts to resolve the Objection.
- The Carrier must make reasonable efforts to start the consultation within the first 5 business days of the Consultation Period.
- If the Land owner/occupier and the Carrier cannot resolve the Objection by agreement by the end of the Consultation Period, the Carrier must prepare a final communication to give to the Land owner/occupier (the “**End of Consultation Notice**”).
- The End of Consultation Notice must tell the Land owner/occupier whether the Carrier intends to proceed with the activities as planned, or whether the Carrier is making any changes to the activities to address the Land owner/occupier’s concerns (see section 5.3 for more information about End of Consultation Notices).
- The Carrier must give its End of Consultation Notice to the Land owner/occupier within 5 business days of the end of the Consultation Period.
- If the Land owner/occupier is not satisfied with the End of Consultation Notice, the Land owner/occupier can write to the Carrier and ask the Carrier to refer the Objection to the TIO. This must be done within 5 business days after receiving the End of Consultation Notice.
- Once the Carrier is asked to refer the Objection to the TIO, move to Stage 4.

Timeline – Consultation Period:

Carrier receives Objection

Business Day 1

Business Day 2

Business Day 3

Business Day 4

Business Day 5: Carrier should initiate consultation

Business Day 6

Business Day 7

Business Day 8

...

Business Day 17

Business Day 18

Business Day 19

Business Day 20: End of Consultation Period

Business Day 21

Business Day 22

Business Day 23

Business Day 24

Business Day 25: Carrier must have given End of

Consultation Notice

to Land owner/occupier

Business Day 26

Business Day 27

Business Day 28

Business Day 29

Business Day 30: Last day for Land owner/occupier

to ask

Stage 4 – Referral to the TIO

- If, after receiving the referral request the Carrier proposes to continue with the activity, it should prepare a referral brief and should send it to the TIO as soon as practical (see section 5.4(a) of this Guide).
- After the TIO receives the referral brief the TIO will write to the Carrier and the Land owner/occupier to confirm receipt and may request additional information.
- The TIO will generally give the parties 5-10 business days to submit additional information.

The TIO will also tell the Carrier and the Land owner/occupier the likely timeframe for the TIO to make a decision on the Objection.

1.4 Emergency land access

The Act allows Carriers to access land without complying with the Land Access Process (and without providing a Notice) in certain situations, including where the Low-Impact Facility activities need to be carried out without delay in order to protect:

- the integrity of a telecommunications network or facility;
- the health or safety of persons;
- the environment;
- property; or
- the maintenance of adequate service levels.

This does not cover situations where the Carrier simply prefers that a service be repaired or replaced more quickly.

2 I'm a Land owner/occupier – what do I need to know?

This Part of the Guide provides specific guidance for Land owner/occupiers about their rights under the Land Access Process.

2.1 Am I a Land owner/occupier?

If you own or occupy the land that a Carrier wants to use to install the Low-Impact Facility, you are a Land owner/occupier for the purposes of this Guide.

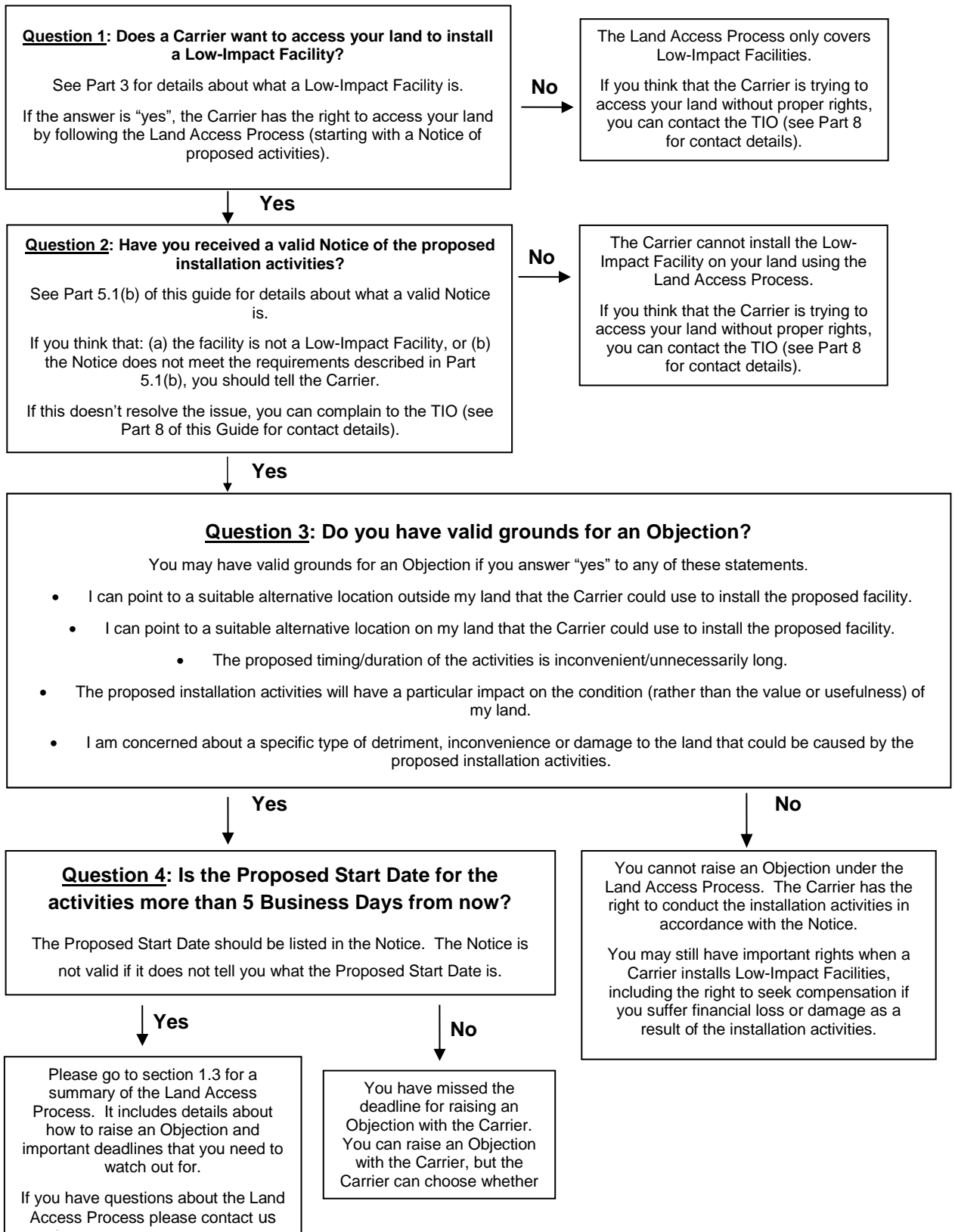
The term “occupier” includes a tenant or sub-tenant of the land but does not generally include neighbours, service providers or other interested parties (e.g. easement holders, persons who use land without permission). In the case of public land, the term “occupier” could sometimes mean the person responsible for the care and management of the land.

2.2 Key things a Land owner/occupier needs to know about the Land Access Process

- A Carrier has the legal right to install Low-Impact Facilities on land without Land owner/occupier consent if it complies with the rules and requirements of the Land Access Process.
 - Under the Land Access Process, the Carrier must give a Land owner/occupier a written Notice explaining the proposed installation activities at least 10 business days before they are scheduled to begin.
 - The time that a Notice is taken to be received depends on how it is given. For notices sent by post, refer to the table at Regulation 6 of the *Australian Postal Corporation (Performance Standards) Regulations 1998*. A Notice left at the residence of the person to whom it is addressed is taken to have been given on the second business day after it was left.
 - After a Notice has been received, there is a right to object to the proposed installation (or the method of installation) but only if the Objection relates to certain specific grounds. The Land owner/occupier **must** notify the Carrier of the grounds of objection and reasons in writing at least 5 business days before the activities are due to start - if the Objection is not made on time, the Carrier can proceed with the installation as proposed, and the TIO will not be able to consider the matter even if the Land owner/occupier cannot reach agreement with the Carrier about the installation.
 - Land owners/occupiers can use the “decision tree” on the next page to help work out whether they have the right to object to a proposed installation of Low-Impact Facilities on land.
 - The Land Access Process only deals with certain types of land access issues. If an issue relating to actions taken by a Carrier is not covered under the Land Access Process the TIO may still be able to help you through the TIO’s general complaint handling service – contact the TIO for more details.
-

2.3 Decision tree – can I object to the proposed activities?

This decision tree is designed to help Land owners/occupiers understand whether they can object to the proposed installation of Low-Impact Facilities on the land. Different decision trees apply in relation to the inspection of land and maintenance of facilities once installed – see Part 7 of this Guide for details.



3 What is a “Low-Impact Facility”?

Laws and regulations allow Carriers to access public and private land in order to install equipment and infrastructure called Low-Impact Facilities and carry out related activities, such as removing existing equipment.

The term “Low-Impact Facility” means specific types of telecommunications equipment and infrastructure (“facilities”) set out in the Determination.

Facilities such as underground cabling, certain overhead cabling, some types of antennas, radio dishes, pits, manholes, pillars, equipment shelters, roadside cabinets and in-building subscriber connection equipment can be Low-Impact Facilities, depending on their dimensions and where they are installed.

Facilities such as new mobile phone base stations and most types of overhead cabling are generally not Low-Impact Facilities.

3.1 When is a facility a “Low-Impact Facility”?

The Determination specifies the types of facilities that qualify as Low-Impact Facilities. A copy of the Determination can be found online here: <https://www.legislation.gov.au/Details/F2018C00150> .

Whether a particular facility that is proposed to be installed by a Carrier is a “Low-Impact Facility” will depend on:

- the type of facility; and
- the type of land where the facility will be installed.

Sometimes a Carrier and a Land owner/occupier may disagree about whether a proposed facility is a “Low-Impact Facility” in accordance with the Determination. For more information about the TIO’s approach to resolve such disagreements, please refer to Part 6.1 of this Guide.

If you are a Land owner/occupier and you are concerned that a Carrier is seeking to access land to install a telecommunications facility that is not a “Low-Impact Facility”, the TIO may be able to provide assistance. Please refer to Part 8 of this Guide for the TIO’s contact details.

3.2 A Carrier wants to install items of NBN equipment – are these Low-Impact Facilities?

The rollout of the National Broadband Network (“**NBN**”) will involve the installation of a broad range of telecommunications facilities on public and private land throughout Australia.

NBN facilities do not automatically qualify as Low-Impact Facilities – they will only be Low-Impact Facilities if they meet the requirements of the Determination.

3.3 Can Carriers access buildings to install Low-Impact Facilities?

Yes. The Act gives Carriers the right to install Low-Impact Facilities, including by accessing buildings to perform the installation if necessary.

3.4 “In-Building Subscriber Connection Equipment”

“In-Building Subscriber Connection Equipment” (“**IBSCE**”) is a category of Low-Impact Facility. The IBSCE category includes facilities that are “installed within a building with the aim of managing and maintaining the supply of carriage services to a customer of a carrier”.

Land owners/occupiers and Carriers sometimes disagree about whether a proposed facility is IBSCE. Whether a particular facility is IBSCE will depend on the particular facts of the situation. However, the TIO will generally observe the following principles:

- in order to install the proposed IBSCE in a building, the Carrier must have a current customer of its own who is already an occupier of that building;
 - if appropriate, the IBSCE may be installed to cater for both current and anticipated future demand – the Carrier will not necessarily be limited to only installing the minimum amount of equipment required to supply current customers;
 - the IBSCE does not need to actually supply a carriage service – it is sufficient if the facility is installed for a purpose connected with the supply of a carriage service; and
 - there is no requirement for the IBSCE to be capable of supplying a carriage service to a customer immediately upon installation.
-

4 What types of Objection are valid?

The Land Access Process only allows Land owners/occupiers to object to the proposed installation of a Low-Impact Facility on one or more of five specific grounds:

- “Using the objector’s land to engage in the activity” (Section 4.30(a) of the Code);
- “The location of a facility on the objector’s land” (Section 4.30(b) of the Code);
- “The date when the carrier proposes to start the activity, engage in it or stop it” (Section 4.30(c) of the Code);
- “The likely effect of the activity on the objector’s land” (Section 4.30(d) of the Code); or
- “The carrier’s proposals to minimise detriment and inconvenience, and to do as little damage as possible, to the objector’s land” (Section 4.30(e) of the Code).

In this Guide, Parts 4.1 to 4.5 explain what types of issues are covered under each of the five grounds, and Part 4.6 lists some common issues that are not covered under any of these grounds (and which therefore **cannot** be raised as an Objection under the Land Access Process).

4.1 “Using the objector’s land to engage in the activity”

In Plain English: “I don’t think that the Carrier needs to use my land to install the facility. I can point to a suitable alternative location on other land that the Carrier could use instead.”

Explanation: In practice, there are limited circumstances where a Land owner/occupier can rely on this ground for Objection. The question is whether there is an alternative site outside the Land owner/occupier’s land that would allow the Carrier to fulfil its purpose in installing the facility. The Land owner/occupier will generally be expected to point out an actual alternate location, not on their land, that is suitable and that the Carrier might be able to use to install the facility.

Example: If a Carrier proposes to install cabling on particular land and there is already an existing facility on a neighbouring property that could be used to co-locate the proposed cabling, the Land owner/occupier could object and ask the Carrier to consider using that existing facility. The Carrier would then need to consider the Land owner/occupier’s request.

4.2 “The location of a facility on the objector’s land”

In Plain English: “I don’t think that the Carrier needs to install the facility in the proposed location on the land. I can point to a suitable alternative location on the land that the Carrier could use instead.”

Explanation: In practice, there are limited circumstances where a Land owner/occupier could rely on this ground for Objection. The question is whether there is a suitable alternative location on the Land owner/occupier’s land that could be used to install the proposed facility. The Land owner/occupier will be expected to point out an alternate location on its land that the Carrier could use. The Land owner/occupier should also explain why the original location is inconvenient or problematic.

Example: If a Carrier proposes to install a conduit running directly through a Land owner/occupier’s property, the Land owner/occupier could object and ask the Carrier to run the conduit around the

perimeter of the property instead. The Carrier would then need to consider the Land owner/occupier's request.

4.3 “The date when the carrier proposes to start the activity, engage in it or stop it”

In Plain English: “The proposed timing of the activities is especially inconvenient (or the proposed duration is unnecessarily long), and I want to suggest timing and duration for the activities that is more reasonable or more suitable to me.”

Explanation: This ground allows a Land owner/occupier to object to the Carrier's proposed installation dates if they are particularly inconvenient for the Land owner/occupier, or to the proposed duration of the installation activities if the Land owner/occupier considers that the duration exceeds what is reasonably required for the activities.

Example: A Land owner/occupier may have concerns that the proposed installation period is so long that it does not provide the Land owner/occupier with enough certainty about the dates when the Carrier actually requires access to the Land owner/occupier's land. If so, the Land owner/occupier could raise an objection on that basis.

The Carrier would then need to work with the Land owner/occupier to determine if it is possible to give more specific access dates, or to otherwise minimise the Land owner/occupier's inconvenience (for example by agreeing to confirm the access dates with the Land owner/occupier as soon as the Carrier has sufficient information to determine when it will require access).

4.4 “The likely effect of the activity on the objector's land”

In Plain English: “The proposed activities will have an impact on the condition of my land (rather than the value or usefulness of my land), and I want the Carrier to do something about it.”

Explanation: This ground of Objection allows a Land owner/occupier to object to the potential impact of the proposed facility (and the proposed method of installation) on the land itself. This includes things such as water contamination and permanent soil erosion. This ground does not allow a Land owner/occupier to object on the basis that the facility may affect the Land owner/occupier's use (or intended use) of the land.

This ground of Objection allows a Land owner/occupier to object to the proposed activities if they create an ongoing risk to the land (such as where the activities compromise the structural integrity of buildings, poles or other structures on the land).

This ground does not allow a Land owner/occupier to object about a temporary impact on the land that will be fixed once the installation activities are completed.

The Land owner/occupier will generally be required to identify a specific risk that is not adequately addressed under the Carrier's proposal to carry out the activity (as described in the Notice) or the Carrier's general obligations under the Act and the Code.

It is important to note that objections about the proposed installation's likely effect on a **building** (such as an MDF room or riser), rather than on the land itself, are unlikely to be successful. This is because the Federal Court has decided that “land” (for the purpose of the Land Access Process) includes

intrusions or activities at ground level but may not include structures (such as high rise buildings) built on the ground.

Example: A Land owner/occupier may have concerns that the excavation work required for the laying of underground cabling might cause top soil erosion. If so, the Land owner/occupier could raise an objection on that basis. The Carrier would need to consider whether there are any particular measures that should be implemented to address this risk, or whether the risk is already adequately addressed through fulfilling the Carrier’s obligation under the Act to observe good engineering practice.

4.5 “The carrier’s proposals to minimise detriment and inconvenience, and to do as little damage as possible, to the objector’s land”

In Plain English: “I am concerned about a specific type of detriment, inconvenience or damage to the land that could be caused by the proposed activities, and I don’t think the Carrier is doing enough about it.”

Explanation: This ground allows a Land owner/occupier to object if the Land owner/occupier considers that the Carrier has not implemented sufficient measures to minimise detriment and inconvenience, and to do as little damage as possible, to the land. It does not allow Land owners/occupiers to object simply because the proposed installation activities will cause detriment, inconvenience or damage to the land.

The Land owner/occupier will generally be required to identify a specific concern about detriment, inconvenience or damage to the land that has not been adequately addressed under the Carrier’s proposal described in the Notice or the Carrier’s general obligations under the Act and the Code.

It is important to note once again that objections about the proposed installation’s likely effect on a **building**, rather than on the land itself, are unlikely to be successful. This is because the Federal Court has decided that “land” (for the purpose of the Land Access Process) includes intrusions or activities at ground level but may not include structures (such as high rise buildings) built on the ground.

Example: A Land owner/occupier could have concerns that about a Carrier’s proposal to install underground cabling, because the Carrier has not agreed to mark the cabling and house it in a protective conduit, which would cause inconvenience when the Land owner/occupier decides to redevelop the land in the future. If so, the Land owner/occupier could raise an objection on that basis.

4.6 Examples of objections that are not based on valid grounds under the Land Access Process

| <i>Matters that are not valid objections under the Land Access Process</i> | <i>Explanation of why the matter cannot be raised as a valid objection</i> |
|---|--|
| Carrier refuses to enter into an access agreement, or agreement to pay access fees | There is no obligation under the Land Access Process for the Carrier to enter into a financial agreement, licence, or warranty of tenure with a Land owner/occupier in order to install a Low-Impact Facility. |

| <i>Matters that are not valid objections under the Land Access Process</i> | <i>Explanation of why the matter cannot be raised as a valid objection</i> |
|---|---|
| | While Carriers and Land owners/occupiers are free to negotiate such arrangements, and often do so, the TIO cannot direct Carriers to enter into such arrangements. |
| The effect the Land Access Process may have on the negotiations between the Carrier and a public utility affected by a proposed land access activity | <p>The Act requires that a Carrier take reasonable steps to enter into an agreement with a public utility in relation to land access activities that is likely to affect the operations of the utility. This is separate from a Carrier's obligation to issue a Notice to the Land owner/occupier.</p> <p>Some Land owners/occupiers who receive a Notice under the Land Access Process also happen to be public utilities, and may view the Notice as diminishing its commercial leverage in negotiating its agreement with the Carrier.</p> <p>A Carrier's failure to enter into an agreement with a public utility (or failure to take reasonable steps to do so) is not a valid ground of Objection the TIO can consider. If a Land owner/occupier believes there is a breach of the Act, it may wish to seek legal advice concerning what other remedies may be available to it under the Act.</p> |
| Impact on the value of the land, or current/future uses of the land | <p>The Land Access Process only allows the TIO to consider Objections about the impact on the land itself, not the impact on the value or uses of the land. A Land owner/occupier cannot object to a proposed facility because it would impact on the Land owner/occupier's plans for the land (e.g. future redevelopment).</p> <p>If the Land owner/occupier suffers any financial loss or damage in relation to its property because of the activities, the Land owner/occupier may be entitled to compensation under the Act. Contact the TIO for further details.</p> |
| There is already an access agreement in place | <p>The fact that the Carrier (or another carrier) has (or previously had) an access agreement with a Land owner/occupier will not prevent the Carrier from accessing the land if it has rights to do so under the Land Access Process.</p> <p>A Carrier's rights under the Land Access Process are separate from the Carrier's rights under any access agreement.</p> <p>If a Carrier seeks to use the Land Access Process even though there is an access agreement in place, the Land owner/occupier should consider whether this breaches the terms of the access agreement. If so, the Land owner/occupier may be able to complain to the TIO under the TIO's general complaint handling service – see Part 1.2 of this Guide for details.</p> |
| Type of proposed facility | Provided that a proposed facility qualifies as a Low-Impact Facility, the Land owner/occupier is generally not allowed to object on the basis that a different type of Low-Impact Facility could be used instead. |
| Visual impact on land or buildings | Provided that a proposed facility qualifies as a Low-Impact Facility, the visual impact on land or buildings is an issue that affects the Land owner/occupier's ability to enjoy the land. The |

| <i>Matters that are not valid objections under the Land Access Process</i> | <i>Explanation of why the matter cannot be raised as a valid objection</i> |
|---|---|
| | Act and the Code only allow the TIO to consider Objections that affect the land itself. |
| Too many Low-Impact Facilities in one location | <p>A Land owner/occupier cannot raise an Objection solely because the Land owner/occupier considers that there are too many Low-Impact Facilities (e.g. antennas, radio dishes or other facilities) in one location.</p> <p>The presence of multiple Low-Impact Facilities does not make the proposed facility “high impact” rather than “low impact” if the proposed facility otherwise qualifies as a Low-Impact Facility under the relevant definitions.</p> |
| Carrier does not intend to co-locate facilities | <p>A Land owner/occupier cannot object simply because a Carrier does not intend to co-locate a proposed facility with an existing facility.</p> <p>However, if the Land owner/occupier is aware of an existing facility that could be used to co-locate the proposed facility the Land owner/occupier could make an objection about the use of their land to engage in the activity, and suggest the existing facility as an alternative location.</p> |
| Carrier’s access or activities may breach easements and similar rights | The Land Access Process does not allow Land owners/occupiers to object to proposed installation activities on the basis that the activities may breach, or cause the Land owner/occupier to breach, third party rights such as easements. |
| Risk that the installation activities may breach laws (including health and safety laws) | <p>The Land Access Process does not allow Land owners/occupiers to object to proposed installation activities on the basis that the activities may breach, or cause the Land owner/occupier to breach, applicable laws (such as health and safety laws).</p> <p>If the Land owner/occupier is concerned that the proposed activities may breach applicable laws, the Land owner/occupier should contact the authorities responsible for administering those laws.</p> |
| Risk that Land owner/occupier may damage the Carrier’s infrastructure | <p>Land owners/occupiers sometimes ask Carriers to agree that the Land owner/occupier will not be responsible if the Land owner/occupier damages any of the facilities that the Carrier is installing on the Land owner/occupier’s land. A Carrier is under no obligation to agree to this.</p> <p>However, a Land owner/occupier could object to the proposed activity if it reasonably considers that the Carrier’s proposals to minimise detriment, inconvenience and damage are insufficient. For example, the Land owner/occupier may consider that there are additional measures the Carrier could implement to reduce the risk of the Land owner/occupier damaging the Carrier’s facility (such as burying cables at a greater depth).</p> |

5 The Land Access Process

This section explains the Land Access Process in more detail, and contains guidance about the TIO's expectations of the Carrier and the Land owner/occupier at each stage of the Process.

Carriers often reach agreement with Land owners/occupiers in relation to accessing land, rather than using their statutory rights under the Land Access Process.

5.1 Stage 1 – Carrier's Notice

The Carrier must give the Land owner/occupier a written Notice that explains the Carrier's proposed activities and informs the Land owner/occupier of certain matters.

The Code provides some guidance on the ways in which the Notice may be given (Section 1.6 of the Code), which would generally involve delivery in person, or leaving at/posting to the Land owner/occupier's last known address (for natural persons) or registered address/head office/principal office (for companies).

The Act and the Code also have special provisions that apply where the Land owner/occupier is difficult to find or identify.

<If the Carrier intends to give the Notice by post:> The time that a Notice is taken to be received depends on how it is given. For notices sent by post, refer to the table at Regulation 6 of the *Australian Postal Corporation (Performance Standards) Regulations 1998*. A Notice left at the residence of the person to whom it is addressed is taken to have been given on the second business day after it was left.

The TIO believes good practice is for the Carrier to send the Notice as a Priority letter as a minimum (and by Express Post preferably), rather than as a Regular letter.

<If the Carrier intends to give the Notice by email:> unless the Land owner/occupier has consented to the Notice being given by way of email, it is not generally good practice to rely on email as the Carrier's only method of giving the Notice. Carriers should also be aware of specific requirements for giving notice to Commonwealth entities by email. The TIO would not necessarily treat an email Notice to be "given" at the time it was sent without further evidence. The TIO encourages the Carrier to proactively seek confirmation of receipt from the Land owner/occupier and retain records of such confirmation.

(a) When must the Notice be given?

The Notice must be given at least 10 business days before the Proposed Start Date for the activities.

(b) What must be included in the Notice?

The Notice must:

- specify the purpose of the proposed activities;
 - detail the activities the Carrier expects to perform;
 - specify the dates on which the Carrier is proposing to conduct the activities;
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- advise the Land owner/occupier that compensation may be payable for any financial loss or damage in relation to the property as a result of the activities; and
- include a statement about how the Land owner/occupier can object to the proposed activities (including the deadline for lodging an Objection, and how the Land owner/occupier should submit the Objection (i.e. a street address, postal address and preferably an email address as well)).

The Carrier should ensure that the description of the proposed installation activities is accurate and consistent throughout the Notice. If the Notice is not sufficiently tailored to properly reflect the particular facts, or if there are inconsistencies in the Notice (for example, if the drawings contradict the written description of the activities), this may result in the Notice being invalid.

Including drawings/plans: The TIO considers that it is good practice for Carriers to include drawings and plans in a Notice to show how and where the proposed activities will be conducted.

The drawings should also (when viewed together with the other materials in the Notice) provide the Land owner/occupier with sufficient information to:

- understand what activities the Carrier wants to perform on the land, e.g. in order to install a Low-Impact Facility;
- determine whether a proposed facility is a Low-Impact Facility; and
- determine whether there are any valid grounds for objection to the proposed activities.

In the TIO's experience, it is good practice to provide drawings of a sufficient standard such that a person can understand the location and dimensions of any facility the Carrier proposes to install without reference to other documents.

"Ongoing" Access Notices: A separate Notice is usually required for each occasion on which a carrier wishes to conduct separate activities on the land. A Notice about the installation of a Low-Impact Facility on land will not be valid to the extent it also covers accessing the land in future to conduct maintenance.

(c) Who needs to be given a Notice?

The Carrier must give the Notice to each owner and each occupier of the land. See Part 2.1 of this Guide for more information about who is a Land owner/occupier under the Land Access Process.

Multi-tenanted property: Where a Carrier wants to access a common area in a multi-tenanted property (such as building risers, foyers, basements, equipment rooms or rooftops) the Carrier does not generally have to give the Notice to individual tenants. In such circumstances it is generally sufficient to give the Notice to the appropriate body corporate or owners' corporation or its representative.

Data centre occupants: Where the Carrier wants to access particular rack space or other space within a data centre, the Carrier generally only needs to notify the parties that are the owners and occupiers of that particular space. The Carrier is not required to notify other parties that occupy other racks in the data centre that are not affected by the activities.

5.2 Stage 2 – Land owner/occupier’s Objection

If a Land owner/occupier has valid grounds to object to the Carrier’s Notice, the Land owner/occupier can lodge an Objection to the proposed activities by notifying the Carrier in writing at least 5 business days before the Proposed Start Date.

(a) How does a Land owner/occupier lodge an Objection to the Notice?

If the Land owner/occupier has valid grounds for an Objection (see Part 4 of this Guide), the Land owner/occupier can object by writing to the Carrier and explaining the grounds and reasons for the Objection.

<Check where the Objection should be sent to:> The Land owner/occupier should read the Notice carefully to ensure the written Objection is sent to the correct address details. The TIO considers it good practice for Carriers to provide an email address in the Notice for Land owner/occupiers to use when lodging written Objections (in addition to any street or postal addresses). However, if the Notice does not specify such an email address, then a Land owner/occupier should not rely on email as the only method of objecting unless the Carrier has consented otherwise.

<Allow sufficient time for the Objection to reach the Carrier:> The written Objection must be given by the Land owner/occupier to the Carrier **at least 5 business days** before the proposed start date for the activities (this date should also be stated in the Notice). If a Land owner/occupier is sending its Objection by post, the Objector should allow sufficient time for delivery.

The TIO recommends that the Objection should:

- identify the grounds for the Objection (see Part 4 of this Guide);
- provide details about the reasons for the Objection; and
- offer proposed alternatives for the Carrier to consider.

5.3 Stage 3 – Consultation Period

During the Consultation Period (which runs for 20 business days after the Carrier receives the Objection), the Carrier must make “reasonable efforts” to resolve the Objection through consultation with the Land owner/occupier. The Carrier must make reasonable efforts to start the consultation process within the first 5 business days of the Consultation Period.

If the Carrier and the Land owner/occupier cannot reach agreement by the end of the Consultation Period, the Carrier must (within 5 business days of the end of the Consultation Period) give a written End of Consultation Notice that tells the Land owner/occupier whether the Carrier will:

- carry out the proposed activity as planned (the Carrier must explain why); or
- carry out the proposed activity with modifications (the Carrier must provide details of the modifications).

The TIO recommends that the End of Consultation Notice should be written in plain English and should:

- clearly explain the basis on which the Carrier has made its decision; and
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- state that if the Land owner/occupier disagrees with the decision, the Land owner/occupier has the right to ask the Carrier to refer the Objection to the TIO (the End of Consultation Notice should also specify the timeframe and process for doing this).

If the Land owner/occupier is not satisfied with the End of Consultation Notice, the Land owner/occupier can write to the Carrier asking for the Objection to be referred to the TIO. This request for referral must be made by a Land owner/occupier within 5 business days after receiving the End of Consultation Notice.

(a) What does “reasonable efforts” to resolve the Objection mean?

This will depend on the circumstances, but the TIO generally expects Carriers to take reasonable steps to address any valid grounds for Objection raised by the Land owner/occupier by:

- attempting to clarify the grounds for the Objection (if they are unclear);
- discussing the grounds for the Objection in detail with the Land owner/occupier;
- requesting that the Land owner/occupier provide alternative proposals if that has not already occurred;
- using reasonable efforts to accommodate the Land owner/occupier’s suggestions;
- clearly explaining the Carrier’s rights and obligations under the Land Access Process; and
- clearly explaining why the Carrier’s proposal adequately addresses the Land owner/occupier’s concerns (if that is the Carrier’s position).

Refer to Part 6.3(a) of this Guide for more information about how the TIO assesses whether a Carrier has taken “reasonable efforts” to resolve an Objection.

(b) What should the Land owner/occupier usually do during the Consultation Period?

The TIO encourages Land owners/occupiers to actively participate in the consultation process.

(c) What must the Carrier do if the Objection is resolved during the Consultation Period?

If the Objection is resolved through private agreement between the Carrier and the Land owner/occupier, details of that agreement should be carefully documented by the Carrier. Where an agreement is reached and the Carrier no longer intends to rely on a Notice it has issued, the TIO expects that the Carrier will clearly tell the Land owner/occupier (preferably in writing) that the Notice is withdrawn.

If the Carrier attempts to resolve the Objection by changing the activity (rather than withdrawing the Notice), then the proposed changes – including any new proposed dates for conducting the activity - must be clearly set out in the End of Consultation Notice. As noted above, the Carrier must give the End of Consultation Notice to the Land owner/occupier within 5 business days after the end of the Consultation Period.

(d) What happens if the Objection cannot be resolved during the Consultation Period?

If the Land owner/occupier is not satisfied with the Carrier’s response as set out in the End of Consultation Notice, it can request the Carrier to refer the Objection to the TIO (see below). This

request must be in writing and must be made to the Carrier within 5 business days from receiving the End of Consultation Notice.

(e) Does the Carrier have to refer the Objection to the TIO?

Yes (if the Land owner/occupier has requested it to do so), if the Carrier wishes to proceed with the proposed activity set out in the Notice. The Carrier must refer the Objection to the TIO even if the Carrier considers that:

- the Objection has no merit; or
- the Land owner/occupier has not complied with some or all the requirements of the Land Access Process; or
- the Carrier has adequately dealt with the objection in the End of Consultation Notice.

Early referral: The TIO requires the Carrier and the Land owner/occupier to negotiate for the full Consultation Period. The TIO will generally not accept Objections that are referred before the end of the Consultation Period, even if the Objection is referred with the agreement of both the Carrier and the Land owner/occupier.

5.4 Stage 4 – Referral of an Objection to the TIO

The TIO will review the materials provided on referral of an Objection to the TIO, and will write to the Carrier and the Land owner/occupier to invite them to provide any other information or documents they think are relevant.

The TIO may also ask the Carrier or Land owner/occupier to provide any further information or documents that the TIO considers will assist it to assess the Objection. It may ask to inspect the proposed installation site with the parties.

The TIO expects the parties to comply with these requests in a timely manner, but a refusal (for example: to provide information requested) will not prevent the TIO from making its assessment on the information available.

The TIO treats an Objection referral as a confidential matter between the Carrier and the Land owner/occupier. However the TIO does not usually grant requests for materials provided to it by a party to be treated as confidential to the exclusion of another party to an Objection (see Part 5.4(d) of this Guide for more information).

The TIO will then assess the Objection and give the Carrier and the Land owner/occupier the TIO's decision, in writing. While the information gathering process may be conducted by TIO staff, the Ombudsman will assess and decide the Objection personally.

The TIO may decide to:

- give a binding direction to the Carrier about how it must conduct the proposed activities; or
 - give no direction to the Carrier about the proposed activities. The effect of this is that the Carrier is then allowed to proceed with the proposed activities as planned (subject to any other court or regulatory action that the Land owner/occupier or a regulator may take).
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The TIO may also give directions about the start and end date of the activities where the proposed dates in the Notice have passed or have otherwise become impractical by the time the TIO makes a decision on the Objection.

(a) When should the Carrier refer an Objection to the TIO?

The Code does not specify a timeframe for the Carrier to refer the Objection to the TIO. However, where the Carrier wants to proceed with the proposed activities despite the Objection, the referral should occur promptly and preferably within 20 business days from when the Carrier receives the Land owner/occupier's request to refer.

(b) What information should the Carrier include in the referral brief of an Objection to the TIO?

When the Carrier refers the Objection to the TIO it should provide the TIO with a referral brief prepared by the Carrier.

The referral brief should contain sufficient information for the TIO to assess whether there is a valid Objection under the Land Access Process for the TIO to consider.

Carriers should ensure that the referral brief includes:

- A covering letter setting out:
 - the full address of the land that the Carrier wishes to access;
 - the name of the Land owner/occupier making the Objection, and whether the Land owner/occupier is an owner or occupier of the land;
 - the "Principal Designated Use" of the land (refer to section 1.6 of the Determination);
 - a description of the proposed activities to be conducted on the land, including the proposed start and end dates;
 - details of any applicable Low-Impact Facility categories under the Determination; and
 - the dates of: the Carrier's Notice, the Land owner/occupier's Objection, the Consultation Period, the End of Consultation Notice and the Land owner/occupier's request to refer the objection to the TIO.
 - Copies of all relevant documents, including:
 - the Notice, the Objection, the End of Consultation Notice, the Land owner/occupier's request to refer the Objection to the TIO and all other correspondence relating to the Objection;
 - notes of any meetings or telephone conversations regarding the Objection;
 - sufficient information about any proposed facilities for the TIO to confirm that they match the nominated Low-Impact Facility categories (e.g. dimensions of equipment, trenching and pits); and
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- reports or other documentation relating to reasonable steps that the Carrier considers it has taken to address the Objection.

The referral brief should be both e-mailed to landaccess@tio.com.au **as well as** posted to PO Box 276, Collins Street West, VIC 8007 (marked to the attention of “Land Access Objections”).

A copy of the referral brief should also be sent to the Land owner/occupier at the same time.

(c) Correspondence with the TIO

If the Carrier or the Land owner/occupier send any letters, e-mails or other materials to the TIO, they must also send copies of that correspondence to the other party.

If the Carrier or the Land owner/occupier wants to submit information to the TIO on a confidential basis, they should first request permission from the TIO to do so (before submitting the information) – see paragraph (d) below.

(d) What information should be provided to the TIO?

Part 6 of this Guide explains how the TIO assesses Objections. The TIO encourages the Land owner/occupier and the Carrier to provide the TIO with information, documents and evidence to assist the TIO in this process.

Depending on the nature of the Objection, this could include things such as additional details of the proposed activities (including more detailed diagrams), cost estimates for alternate proposals, expert reports on the technical feasibility of alternate proposals, attendance at site visits and environmental impact statements.

Will the TIO keep my information confidential?

The TIO does not usually grant requests for materials provided to it by a party to be treated as confidential to the exclusion of another party to an Objection.

However, a Land owner/occupier or Carrier may request that the TIO treat certain information as confidential, and the TIO will consider such requests on a case by case basis. Such a request must be supported by substantial evidence demonstrating why the TIO should keep the information confidential.

(e) Can the parties settle or withdraw the Objection or the Notice after the Objection has been referred to the TIO?

By agreement between the parties: The Carrier and the Land owner/occupier can reach agreement to resolve the Objection at any time before the TIO reaches a decision on the Objection. If this happens, the parties should notify the TIO in writing that the Objection has been resolved by an agreement between them (if this agreement involves the Carrier withdrawing the Notice, that must be clearly stated when notifying the TIO).

The parties may provide the TIO with a copy or details of the agreement, but this is not mandatory.

The TIO will then cease handling the Objection and the Carrier may conduct the activities on the land either in accordance with the Notice or, if the Notice has been withdrawn by the Carrier, in accordance with the terms of the agreement.

Where the Land owner/occupier withdraws the Objection (without reaching an agreement with the Carrier): The Land owner/occupier can withdraw the Objection at any time before the TIO reaches a decision on the Objection. The Land owner/occupier should notify the TIO and the Carrier in writing that it has withdrawn the Objection. If this happens, the TIO will generally write to the parties to tell them that the TIO has finalised dealing with the Objection without giving a direction to the Carrier, resulting in the Carrier being able to proceed with conducting the activities on the land.

(f) Will the TIO publish its decision about an Objection?

While the Land Access Process is a private matter between the Carrier and Land owner/occupier, the TIO may, from time to time, publish de-identified summaries of its decisions concerning Objections.

(g) Can the TIO's decision about an Objection be appealed?

There are no provisions in the Land Access Process that allow the Carrier or Land owner/occupier to appeal decisions made by the TIO. It may be possible to have the TIO's decision reviewed by a court in certain limited circumstances, for example if the TIO does not make its decision in a fair way – legal advice should be sought about this if this is being considered.

6 How the TIO assesses Objections

This Part of the Guide explains how the TIO assesses Objections that have been referred to the TIO by the Carrier. The TIO's general approach is to consider the following issues:

- whether a proposed facility as described in a Notice is a Low-Impact Facility (see Part 6.1 of this Guide);
- whether the Carrier and the Land owner/occupier have complied with the Land Access Process (see Part 6.2 of this Guide);
- whether the grounds set out in the Objection are valid and substantiated (see Part 6.3 of this Guide); and
- whether there any other relevant considerations under the law, good practice, or what is fair and reasonable in the circumstances (see Part 6.4 of this Guide).

Once the TIO has considered these issues the TIO will decide whether it is appropriate to give a direction to the Carrier about how the land access activities must be conducted; or whether it will not give a direction to the Carrier.

6.1 Does the proposed activity involve a Low-Impact Facility?

The TIO will consider whether a facility the Carrier proposes to install qualifies as a Low-Impact Facility defined under the Determination (see Part 3 of this Guide for more details).

The TIO will interpret the Determination in accordance with the law and with regard to the intention of the Determination, the objectives of the Act and what is fair and reasonable in the circumstances. If appropriate, the TIO may seek legal or other expert advice to inform its interpretation.

If the TIO forms the view that the proposed facility is not a Low-Impact Facility, the TIO will inform the Carrier and Land owner/occupier and will generally decline to consider the Objection. This does not mean that the Carrier can install the proposed facility – if a facility is not a Low-Impact Facility, the Carrier cannot rely on the Land Access Process to install the facility.

6.2 Have the Carrier and Land owner/occupier complied with the Land Access Process?

The TIO will consider whether the Carrier and the Land owner/occupier have complied with the timeframes and other requirements of the Land Access Process (see Part 5 of this Guide for more details).

If aspects of the Land Access Process have not been complied with (for example, if particular deadlines have not been met) the TIO will consider whether it is still able to consider the Objection. In some situations, the TIO may decide that the Land Access Process allows it to continue to deal with an Objection, such as where:

- the error is technical in nature and did not cause material disadvantage to the “other party” (that is, the party that did not make the error); or
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- the other party has agreed to continue with the Land Access Process notwithstanding the error.

If the TIO determines that the Carrier's Notice is manifestly deficient (for example, because it does not sufficiently specify the installation activities or the purpose of the installation) the TIO may decide that the Carrier is unable to rely on the Notice to conduct the proposed installation activities. In that situation, if the Carrier still wishes to install the proposed facility, the Carrier could start the Land Access Process again by issuing a new, compliant Notice.

6.3 Are the grounds of the Objection valid and substantiated?

The TIO will only consider giving a direction to the Carrier about how the proposed activities must be conducted if:

- the Land owner/occupier has raised an Objection based on valid grounds (see Part 4 of this Guide); and
- the grounds for Objection can be substantiated.

(a) Determining whether the grounds for Objection are substantiated

If the TIO considers that the Land owner/occupier has raised an Objection based on valid grounds, it will consider whether the grounds for Objection are substantiated; that is, whether it might be appropriate for the Carrier to take further steps (including changes to the proposed activities). The TIO can take into account factors such as:

- the discussions between the Carrier and the Land owner/occupier, including any discussions before the Notice was issued;
 - whether the Land owner/occupier is adequately protected by the Carrier's general obligations under the Act, which include obligations for a Carrier to take all reasonable steps to (among other things):
 - do as little damage as is practicable;
 - cause as little detriment and inconvenience as is practicable;
 - ensure that the land is restored (within 10 business days of the completion of the activities) to a condition that is similar to its condition before the activities began;
 - carry out the activities in accordance with "good engineering practice"; and
 - protect the environment; and
 - a submission by the Carrier relying on the fact that the Code says that a Carrier is not required to change the proposed activities if doing so would:
 - be not economically feasible (see Part 6.3(b) of this Guide);or
 - be not technically practicable (see Part 6.3(c) of this Guide);or
 - be likely to have a greater adverse effect on the environment (see Part 6.3(d) of this Guide); or
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- be inconsistent with a recognised industry standard or practice (see Part 6.3(e) of this Guide).

(b) What does “not economically feasible” mean?

The TIO will consider whether a Land owner/occupier’s alternative approach for the Carrier to carry out the proposed activity is not economically feasible by reviewing information provided by the Carrier about the costs and benefits of the Land owner/occupier’s proposed alternative approach. This may involve considering factors such as:

- the equipment, infrastructure or works that would be required to implement the Land owner/occupier’s proposed approach;
- the Carrier’s expected installation and on-going maintenance costs in implementing the Land owner/occupier’s proposed approach; and
- the benefits, including different or additional benefits that the Land owner/occupier’s proposed approach would create for the Carrier and end users of the Carrier’s services (such as improving the quality of services or increasing capacity for potential future customers).

In order to satisfy the TIO that a Land owner/occupier’s proposed alternative approach is “not economically feasible”, the Carrier must generally do more than simply point to increased costs. The TIO would need to be able to accept that the Carrier has demonstrated that the costs and benefits of the Land owner/occupier’s proposed alternative approach for the installation are such that the Carrier would not proceed with the installation.

The TIO will consider any cost-benefit analysis of the Land owner/occupier’s proposed alternative approach. Such analysis may be provided to the TIO by the Carrier or the Land owner/occupier. Detailed cost-benefit information may assist a Carrier to argue that a Land owner/occupier’s proposed approach is “not economically feasible” because it involves a substantial increase in costs without any corresponding increase in benefits.

The TIO may take any economic inefficiency (including comparative costs between the approach as proposed by the Carrier and Land owner/occupier respectively) into account when considering the overall merits of the Objection but does not consider that inefficiency alone equates to a proposal not being economically feasible.

(c) What does “not technically practicable” mean?

The TIO’s approach to this question is to consider whether, for technical reasons, the Carrier has demonstrated in its submission to the TIO that it would not be able to undertake the activity in accordance with the Land owner/occupier’s proposed approach.

For example, the Carrier may argue that it does not have the necessary equipment or expertise to install the facility in accordance with the Land owner/occupier’s proposed approach.

The TIO may also consider whether the Land owner/occupier’s proposed approach would have an unacceptable impact on the quality of the services the Carrier will provide using the facility or the Carrier’s ability to maintain the facility, such as by unacceptably increasing the risk of service degradation or outages.

The TIO may not accept that the Land owner/occupier's proposed approach is "not technically practicable" only because it has been demonstrated that it would be complex or difficult for the Carrier to implement. The TIO's approach to considering a submission from a Carrier about whether an alternative proposal is "not technically practicable" will be based on the TIO's experience in dealing with telecommunications facility matters as well as information provided by the Land owner/occupier and Carrier.

(d) What constitutes a "greater adverse effect on the environment"?

Many types of installation activities have a certain level of impact on the land, but these impacts may not necessarily be "adverse effects" (particularly if the impact is only temporary). An impact on the land will only have an "adverse effect on the environment" if it is harmful to the environment, or negatively affects the purpose of the specific environment at the relevant location.

In determining whether an impact on the land arising from a suggested change to the Carrier's proposed activities has an "adverse effect" on the environment, the TIO may consider factors including:

- the nature of the specific environment at the relevant location;
- the type and relative scale of the impact;
- the type of damage that might be caused to the environment; and
- whether the impact on the environment can be minimised or mitigated through good engineering practice.

For example, land excavation and vegetation clearing are not automatically considered "adverse effects" on the environment. However, these activities if arising from a suggested change to the Carrier's proposed activities may have an "adverse effect" if the Carrier can show that they will have cumulative effects on the land such as soil erosion, weed infestation or water pollution.

If the Carrier wishes to argue that the Land owner/occupier's proposed approach will have "a greater adverse effect" than the Carrier's original proposal for the activities, the Carrier should provide the TIO with information that clearly demonstrates:

- how the Land owner/occupier's proposed approach will have an "adverse effect" on the environment; and
- how the effect on the environment of the Land owner/occupier's proposed approach will have a *greater* adverse effect on the environment, as compared to the approach in the Carrier's original proposal; and
- how this greater adverse effect on the environment would be reduced (or avoided altogether) by taking the approach in the Carrier's original proposal.

(e) What does "inconsistent with a recognised industry standard or practice" mean?

The TIO will assess consistency with recognised industry standard or practice based on its experience in dealing with telecommunications facility matters and any additional information provided by the Land owner/occupier and Carrier.

The TIO may consider whether the Land owner/occupier's proposed approach is inconsistent with the Carrier's general obligations when installing Low-Impact Facilities. As an example, it might be reasonable for a Carrier to decline a Land owner/occupier's request to lay cabling around the perimeter of the Land owner/occupier's property where there is already an existing conduit running directly through the Land owner/occupier's property that could be used to co-locate the new cabling. Carriers have a general obligation under the Code to co-locate facilities where possible.

6.4 The law, good practice and what is fair and reasonable

Where there is a valid ground for Objection and the Objection could be substantiated, the TIO will only make a direction to the Carrier after considering relevant laws, what is good practice in the telecommunications industry, and what is fair and reasonable in the circumstances. This may involve weighing factors such as:

- the Land owner/occupier's interests in the land;
 - the long-term interests of end-users of carriage services (and services provided using carriage services);
 - the efficiency of the Australian telecommunications industry; and
 - the desirability of promoting outcomes which cause the least detriment, inconvenience and damage overall.
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7 Land Access Process for the inspection of land and maintenance of facilities

In addition to allowing Carriers to install Low-Impact Facilities, the Land Access Process also allows a Carrier to enter on land for inspection purposes, and to maintain already installed facilities, without the consent of the Land owners/occupiers.

A Carrier can issue a Notice about one or more activities (such as to maintain an existing facility as well as to install a new Low-Impact Facility at the same time).

7.1 Entry on, and inspection of, land

A Carrier can enter on and inspect land to determine whether the land is suitable for its purposes.

These are called “land inspection activities” and the process involved is similar to the one described in this Guide about the installation of Low-Impact Facilities.

A decision tree to help Land owners/occupiers understand whether they can object to the proposed land inspection activities is set out in Part 7.3(a) of this Guide.

For more information, see Chapter 2 of the Code.

7.2 Maintenance of previously installed facilities

A Carrier can maintain a facility previously installed on land, and can do things such as enter and occupy land, remove a fence, or erect a gate in a fence for the purpose of maintaining the facility.

These are called “maintenance activities” and the process involved is similar to the one described in this Guide about the installation of Low-Impact Facilities.

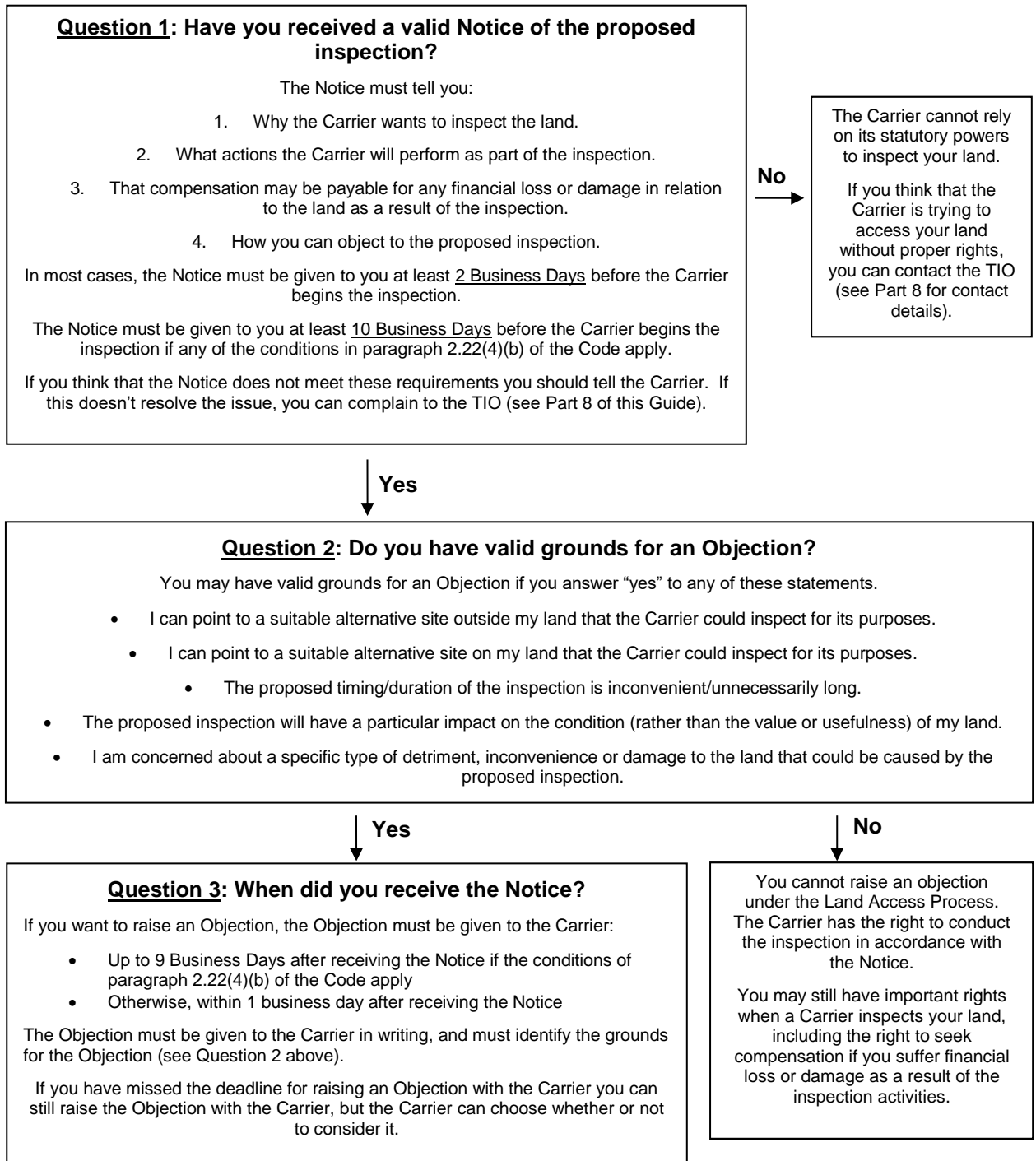
A decision tree to help Land owners/occupiers understand whether they can object to the proposed maintenance activities is set out in Part 7.3(b) of this Guide.

For more information, see Chapter 6 of the Code.

7.3 Decision trees – Land inspection activities and maintenance activities

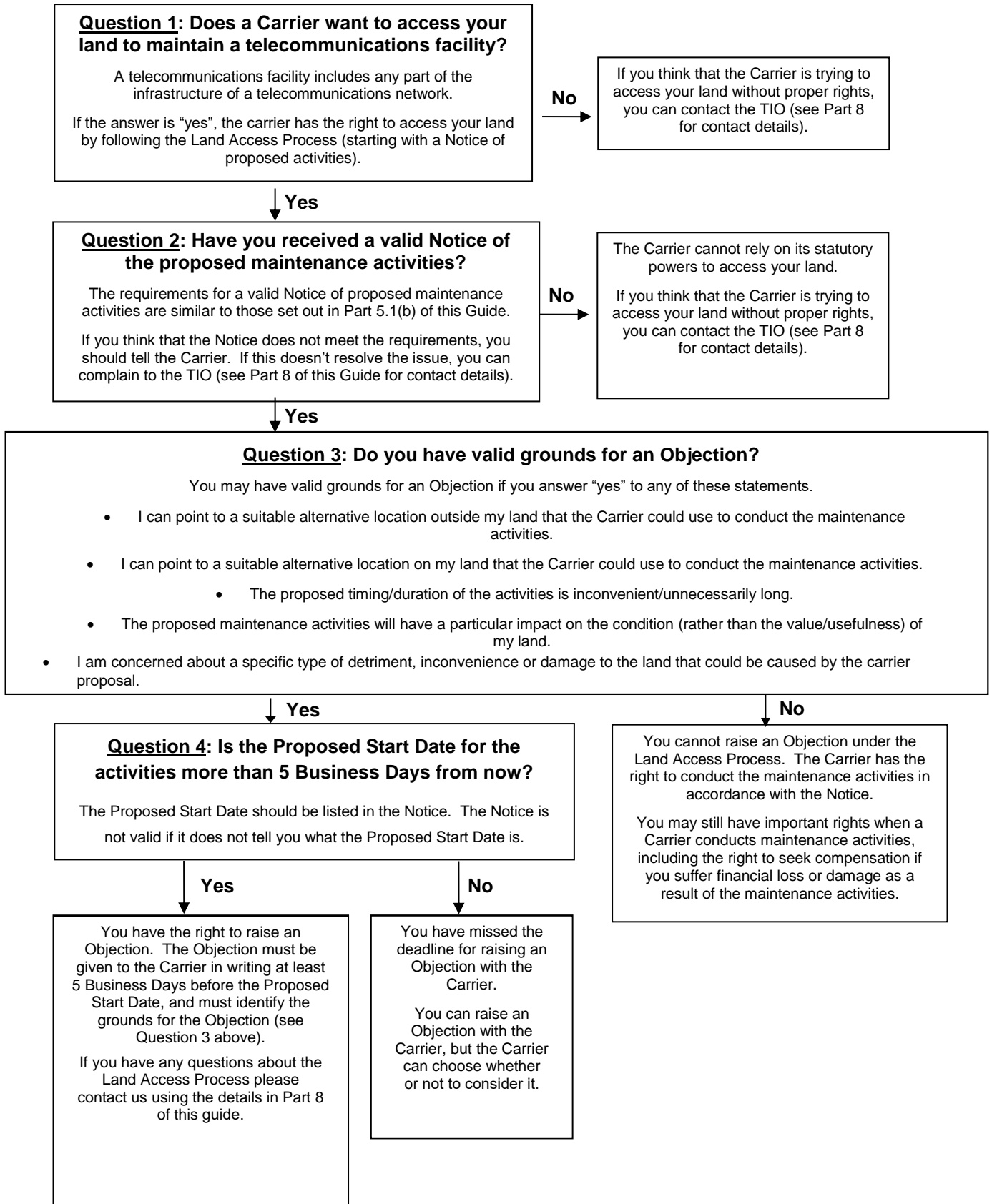
(a) Decision tree: land inspection activities

This decision tree is designed to help Land owners/occupiers understand whether they can object to a Carrier's proposed land inspection activities.



(b) Decision tree: maintenance activities

This decision tree is designed to help Land owners/occupiers understand whether they can object to a Carrier's proposed maintenance activities.



8 How to contact the TIO

The TIO handles a broad range of complaints about telecommunications and Internet services.

The TIO has specific power to handle Objections under the Land Access Process.

If you have an enquiry about a Notice, an Objection or other types of complaints that we handle, please contact us:

- **Phone:** 1800 062 058 (free from landlines, standard rates apply for calls from mobiles). If you call from a mobile you can ask us to call you back.
- **Website:** www.tio.com.au
Complaints and enquiries can be lodged through the Making a Complaint section of our website.
- **Fax:** 1800 630 614
- **Interpreter service:** 131 450
- **Post:** PO Box 276, Collins Street West, VIC 8007
- **Email:** tio@tio.com.au
(Please note that Carriers should not send Objection referral briefs to this email address. See Part 5.4(b) of this Guide for further instructions)

If you are deaf or have a hearing impairment or speech impairment, contact us through the National Relay Service:

- TTY users phone 1800 555 677 then ask for 1800 062 058
 - Speak and Listen users phone 1800 555 727 then ask for 1800 062 058
 - Internet relay users connect to the NRS (www.relayservice.com.au) and then ask for 1800 062 058
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9 Useful resources

9.1 Legislation

The following legislation is relevant to the Land Access Process, and clicking on the hyperlinks will allow you to access the legislation at the Australian Government's Federal Register of Legislation. When using legislation at the Register, please ensure that the version of the legislation displayed is marked "In force".

- **Telecommunications Code of Practice 2018 (Cth):** <https://www.legislation.gov.au/Details/F2018L00171>
Chapter 4 of the Code sets out the steps and requirements of the Land Access Process (see in particular Part 5 of Chapter 4). Part 3 of Chapter 4 specifies certain additional obligations that Carriers must comply with when installing Low-Impact Facilities.
- **Telecommunications Act 1997 (Cth):** <https://www.legislation.gov.au/Latest/C2016C00845>
Schedule 3 of the Act gives Carriers rights to access land to install or maintain telecommunications facilities (including Low-Impact Facilities). It also imposes a range of important obligations on Carriers when they exercise their rights to install and maintain telecommunications facilities. These include obligations to do as little damage as practicable and to take reasonable steps to restore the land once the activities are completed.
- **Telecommunications (Low-impact Facilities) Determination 2018 (Cth):** <https://www.legislation.gov.au/Details/F2018C00150>
The Determination defines what types of telecommunications facilities are Low-Impact Facilities.

9.2 Useful websites

The following organisations also play roles in the installation of telecommunications facilities in Australia.

- **The Australian Communications and Media Authority (ACMA):** www.acma.gov.au
The ACMA is Australia's regulator for broadcasting, the Internet, radiocommunications and telecommunications. Its responsibilities include setting and enforcing industry standards and codes for the installation of telecommunications facilities. The ACMA has published a guide for building owners, tenants and Carriers about their rights and obligations when Carriers install telecommunications facilities, which is available on the ACMA website and can be viewed here: <http://www.acma.gov.au/Industry/Telco/Infrastructure/Network-facilities/accessing-buildings-to-install-telecommunications-facilities-i-acma>
 - **The Communications Alliance:** www.commsalliance.com.au
The Communications Alliance was formed to provide a unified voice for the Australian communications industry. One of its roles is to lead the development of self-regulatory and co-regulatory initiatives, including industry guidelines regarding land access and the installation of telecommunications facilities.
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- **The Department of Communications:** www.communications.gov.au

The Department of Communications (formerly the Department of Broadband, Communications and the Digital Economy) is the Commonwealth Government Department that is responsible for setting and administering telecommunications policy in Australia.

- **Dial Before You Dig:** www.1100.com.au

Dial Before You Dig is a not for profit organisation designed to prevent damage to pipe and cable infrastructure in Australia. It provides members of the public with information about underground infrastructure in their areas.
