

The Existing Regulatory Scheme Comprises:

- A. An Act about management of the radiofrequency spectrum and other matters. The short title is Radiocommunications Act (Cth) No. 174 1992 as amended;
- B. An Act about telecommunications and for related purposes. The short title is Telecommunications Act (Cth) 1997, particularly Schedule 3 of that Act;
- C. the Telecommunications Code of Practice (Cth) 1997 issued by Richard Kenneth Robert Alston, Minister for Communications and the Arts, acting under subclause 6(3) of Schedule 3 to the Telecommunications Act 1997 and section 4 of the Acts Interpretation Act 1901;
- D. the Telecommunications (Low Impact Facilities) Determination (Cth) 1997 issued by Richard Kenneth Robert Alston, Minister for Communications and the Arts, acting under subclause 6(3) of Schedule 3 to the Telecommunications Act 1997 and section 4 of the Acts Interpretation Act 1901;
- E. An Act relating to the protection of the environment and the conservation of biodiversity and for related purposes. The short title is Environmental Protection and Biodiversity Conservation (Cth) (EPBC) Act 1999; and
- F. Laws and regulations at State Territory and Local Government level.
- G. Commonwealth Legislation including the ACT (PALM) Act 1988.

A. Radiocommunications Act

The *Radiocommunications Act (Cth) 1992* (RA) provides two main mechanisms for the Australian Communications and Media Authority (ACMA) (formally the Australian Communications Authority (ACA)) to regulate EMR from radiocommunications devices:

- (i) under section 162, the ACMA may make mandatory standards to protect the health and safety of people who operate, work on, use or are reasonably likely to be affected by the operation of radiocommunications transmitters; and
- (ii) under section 107, the ACMA is able to determine specific licence conditions with which operators of particular radiocommunications devices must comply.

Using its power to set standards, in March 2003, the ACMA's predecessor the ACA, introduced the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003* to apply to certain mobile transmitters including cellular mobile phone facilities

and two way radios. Amongst other things, this sets mandatory limits on EMR exposure from such equipment.

The RA gives the ACMA power to set licence conditions, in March 2003 the ACMA introduced the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*. Amongst other things, this determination sets certain mandatory limits on public exposure to EMR from mobile base stations operated under an ACMA licence. Carriers operating mobile base stations require a licence from the ACMA and must comply with these licence conditions.

The limits for public exposure to EMR adopted by the ACMA from March 2003 are based on the *Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz*, published by the Australian Radiation and Nuclear Safety Agency (ARPANSA) in 2000, referred to as the ARPANSA Standard.

B. Telecommunications Act

The *Telecommunications Act (Cth) 1997* establishes a regime for Carriers' rights and responsibilities when inspecting, maintaining or installing telecommunications facilities.

Schedule 3 provides authority for Carriers to inspect land, maintain facilities or install any declared 'low impact facilities' or temporary defence facilities. In these cases, Carriers have statutory immunity from certain State and Territory laws. However, when they undertake these activities, they must comply with certain requirements that are set out in Schedule 3 (see below) of the *Telecommunications Act 1997* and additional legislative requirements that have been imposed by the Minister in the *Telecommunications Code of Practice 1997*. These have effect as Carrier licence conditions.

There is also provision for a Carrier to apply to the ACMA for a "facilities installation permit" to carry out installation of facilities where the Carrier does not obtain the approval of the relevant State, Territory or local government body or the owner of the land. However, this process involves onerous obligations and is little used.

In very general terms, Schedule 3 deals with the conditions on which Carriers must exercise their powers of inspection, maintenance and installation. The conditions deal with, for instance:

- restoration of land
- doing as little damage as possible
- the giving of notice to certain interested parties like owners and occupiers
- agreements that may be entered with parties

- best practice
- noise
- compliance with relevant industry standards and codes.

However, Schedule 3 also allows the Minister to set additional conditions in a Code of Practice.

C. Telecommunications Code of Practice 1997

Codes of practice may be developed and enforced by some government agencies under authority from Parliamentary legislation. Such agencies are usually those with responsibility to regulate and licence a specific industry. Codes of practice must be registered with the agency, be freely available to industry stakeholders and explain their content.

A code of practice must be complied with by industry stakeholders. The regulatory agency enforcing a code of practice has power to counsel a stakeholder for non-compliance and to suggest better practice to improve compliance. If a stakeholder repeatedly or fundamentally fails to comply with a code of practice or disregards counsel or warnings the regulatory agency can find the stakeholder unfit to be licensed. This could result in fines or deregistration from the industry.

The *Telecommunications Code of Practice 1997* repeats and builds on the obligations that are in Schedule 3 of the Telecommunications Act (Cth) 1997. 3GIS, Telstra and the other mobile phone Carriers are stakeholders registered by the ACMA.

The *Code of Practice* is set out in chapters each of which deals with the obligations on Carriers when undertaking five kinds of activities. Three of those activities are relevant here:

1. inspecting land,
2. installing low impact facilities; and
3. maintenance of facilities.

The additional requirements deal with, for example:

- additional notice requirements including to the Environment Secretary;
- additional noise requirements;
- procedures for dealing with objections; and
- compliance with recognised industry codes and standards.

This last requirement is significant because it makes it compulsory for Carriers to comply with Codes that deal with relevant activities covered by this Code. Since it is a condition of Carriers' licences that

they must comply with the *Telecommunications Act (Cth) 1997* and the Ministerial Code, and the latter requires compliance with certain provisions of the Australian Communications Industry Forum Code (ACIF C564:2004 (the Code)), if Carriers do not comply with those provisions they may be in breach of their licence conditions.

The aim of the Code is to deal with the concerns of the community about the risks of radiofrequency electromagnetic radiation (RF EMR) exposure by allowing the community and councils to have greater participation in decisions made by Carriers. It cannot change the existing regulatory regime at local, State or Federal level, but can only supplement the existing requirements already imposed on Carriers. The Code supplements the requirements already imposed on Carriers under the existing legislative scheme by requiring them to consult with the local community and to adopt a precautionary approach in planning, installing and operating radiocommunications infrastructure.

D. The Low Impact Determination

The *Telecommunications (Low-impact Facilities) Determination 1997* as amended (the LIF determination) defines what is meant by “low impact facilities”. The policy rationale for treating Low Impact Facilities differently was to achieve a balance between authorising facilities that are essential to maintaining telecommunications networks, and minimising significant planning or environmental issues of concern to the local community.

The determination does not, and cannot, list any aerial cabling or certain (greater than 5 metres) mobile telecommunications towers. This means that the installation of these facilities, which have been among the most controversial forms of infrastructure, are regulated under State and Territory laws unless the Carrier obtains a facilities installation permit.

As mentioned above, although the installation of Low Impact Facilities is exempt from planning laws, Carriers must comply with the relevant requirements in Schedule 3 and the Telecommunications Code of Practice including notification of land owners, occupiers and others.

The Low Impact Determination and the Telecommunications Code of Practice are available at:

www.dcita.gov.au - under Legislation or from Commonwealth Government Bookshops.

E. Environment Protection and Biodiversity Conservation (EPBC) Act 1999

The *Environment Protection and Biodiversity Conservation (Cth) (EPBC) Act 1999* obliges telecommunications carriers to consider ‘matters of

national environmental significance'. Under this legislation, an action will require approval from the Minister of Environment if the action has or is likely to have an impact on a matter of 'national environmental significance'.

According to the *EPBC Act 1999*, there are six matters of national significance, which must be considered. These matters do not apply to the proposed development. **Table 3.1** provides a summary of these issues and outlines compliance with the EPBC Act.

Table 3.1: EPBC ACT 1999: RELEVANT MATTERS FOR CONSIDERATION

1. World Heritage Properties	<u>No</u> subject site is listed on the World Heritage list.
2. Ramsar Wetlands of International Significance	<u>No</u> subject site is located on or near a wetland identified as having international significance.
3. National Threatened species and Ecological Communities	<u>No</u> native, rare or endangered species or ecological communities would be affected by the Network Plan
4. Migratory Species	<u>No</u> rare, native or endangered migratory species are known to exist on site or within the immediate surrounds of any subject site.
5. Commonwealth Marine Areas	<u>No</u> subject site is located within or near a Commonwealth Marine area identified as having 'national environmental significance'.
6. Nuclear Actions	<u>No</u> subject site will affect or is located within a nuclear zone.

F. State and Territory laws

The planning laws and practices in each State, Territory and local government area differ widely and it is beyond the scope of this Network Plan to summarise them. However, State and Territory governments are progressively introducing Codes of Practice and statutory controls dealing with new telecommunications facilities under their jurisdiction. These State and Territory wide controls provide design and siting guidelines, measures to protect local heritage and other controls, against which local Councils can assess Development Applications. Readers are advised to make their own enquiries of the relevant planning authority.

Source: ACIF Code C564:2004: Deployment of Mobile Phone Network Infrastructure; Australian Communications Industry Forum, 2004

G. Commonwealth Legislation

ACT (PALM) Act 1988 insofar as it applies to this proposal.