TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

Guidelines on Land Access Jurisdiction

Fourth edition

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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 permission from the land owner or 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 Telecommunications Industry Ombudsman (TIO) has a role in determining objections from land owners and occupiers to land access activities proposed by carriers – including the installation of low-impact facilities, land inspections and facility maintenance. Under current law, carriers are required to refer unresolved land access objections to the TIO when requested by the land owner or occupier, and carriers must comply with any resulting directions made by the TIO. In some circumstances carriers may also refer an objection to the TIO.

This Guide is written to help both carriers and land owners and occupiers better understand the land access process, as well as each other's rights. While it is not a substitute for legal advice, it is a useful reference for carriers who are thinking about accessing land, and for land owners and 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 – have continued to evolve. We have also received valuable feedback from carriers, land owners and occupiers about how they use the Guide. This edition includes changes arising from amendments to the *Telecommunications (Low-impact Facilities) Determination 2018* (Cth), the *Telecommunications Code of Practice 2021*, and guidance provided by recent case law.

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

Judi Jones
Ombudsman

April 2022

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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"** and **"Occupiers**") and telecommunications carriers ("**Carriers**") to understand their rights and responsibilities when a Carrier wants to access land under Schedule 3 of the *Telecommunications Act 1997* (Cth) (the "**Act**").

Carriers may engage in three types of land access activities using their statutory powers:

- inspect the land to determine whether the land is suitable for the Carrier's purpose;
- install a facility on the land; and
- maintain a facility that is situated on the land.

This Guide primarily deals with installing Low-Impact Facilities. Similar processes also exist for inspecting land and maintaining facilities once installed (see Part 7 of this Guide). Low-Impact Facilities are specific types of telecommunications infrastructure and equipment set out in the *Telecommunications (Low-impact Facilities) Determination 2018* (Cth) (the **Determination**) (see Part 3 of this Guide).

Schedule 3 of the Act and the *Telecommunications Code of Practice 2021* (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 or Occupiers, and without obtaining State, Territory or local government approvals. The main responsibilities of Carriers under the Land Access Process are to notify Land owners and Occupiers before conducting the activities. If the Land owner or Occupier objects, the Carrier must make reasonable efforts to consult with a Land owner or Occupier about the activities.

Land owners and Occupiers can object to the proposed land access activity on certain grounds and within certain timeframes. If a Land owner or Occupier and the Carrier are unable to resolve the objections by agreement, the Land owner or Occupier can ask the Carrier to refer the objection to the TIO. If the Land owner or Occupier asks the Carrier to refer the objection to the TIO, the Carrier must do so.

The summary in section 1.3 of this Guide provides an overview of the entire Land Access Process. We recommend 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 and 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 or Occupier's request);
- complaints that a Carrier has installed facilities on land without following the Land Access Process; or
- 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 will sometimes be able to assist to resolve land-related complaints not covered by the Land Access Process. See Part 9 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 and Occupiers on 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 installing Low-Impact Facilities. Similar processes, though slightly different (including shorter timelines for inspections), also exist for inspecting land and maintaining facilities once installed (see Part 7 of this Guide).

Stage 1 – Carrier's notice of proposed activities

- The Carrier gives Land owners and 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 0 for information about Notices).

  The Notice must specify the proposed start date for the activities (the "**Proposed Start Date**"). The Notice must be given at least 10 business days before the Proposed Start Date.

Timeline – Notice and Objection:

Proposed Start Date

10 business days before: Notice of proposed activities

9 business days before

8 business days before

7 business days before

6 business days before

5 business days before: Deadline for notifying

Stage 2 Objection by Land owner or Occupier

- If a Land owner or Occupier has any valid objection, written reasons and details (the "**Objection**") must be given to the Carrier at least 5 business days before the Proposed Start Date.
- Once the Carrier receives the Objection, move to Stage 3 (on the next page).

Objection

4 business days before

3 business days before

2 business days before

1 business day before

Stage 3 – Consultation Period

- The Carrier has 20 business days (starting when the Carrier receives the Objection) to discuss the Objection with the Land owner or Occupier to 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. The Carrier should then continue to try to resolve the Objection through the Consultation Period. While Land owners and Occupiers have no obligation to work with the Carrier to resolve the Objection, it is likely to be in the interest of a Land owner or Occupier to try to resolve the Objection by agreement.
- At the end of the Consultation Period, the Carrier must prepare a final communication to give to Land owners and Occupiers (the **"End of Consultation Notice")**.
- The End of Consultation Notice must tell the Land owner or 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 or Occupier's concerns (see section 0 for more information about End of Consultation Notices).
- The Carrier must give its End of Consultation Notice to the Land owner or Occupier within 5 business days of the end of the Consultation Period.
- If a Land owner or Occupier is not satisfied with the End of Consultation Notice, the Land owner or Occupier can write to the Carrier and ask the Carrier to refer the Objection to the TIO. The Carrier must do this within 5 business days after receiving the End of Consultation Notice.
- If, after receiving the referral request the Carrier proposes to continue with the activity, it should prepare a referral brief and must send it to the TIO within 10 business days (see section 3.4(a) of this Guide).
- The Carrier may itself refer an Objection to the TIO without a request from the Land owner or Occupier, but only if it has made reasonable efforts to resolve the matter within 10 business days after commencing the consultation and the Carrier's efforts have been conducted in good faith. The Carrier must prepare a referral brief and send it to the TIO.
- Once the Objection is referred 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 or Occupier
Business Day 26
Business Day 27
Business Day 28
Business Day 29
Business Day 30: Last day for Land Owner/occupier to ask Carrier to refer Objection to TIO

Stage 4 – Referral to the TIO

- After the TIO receives the referral brief the TIO will write to the Carrier and the Land owner or 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 or Occupier the likely timeframe for the TIO to make a decision on the Objection.

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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. These situations include 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.

Carriers cannot use the emergency access process for situations where the Carrier simply prefers that a service be repaired or replaced more quickly.

2. Important information for Land Owners and Occupiers

This Part of the Guide provides specific guidance for Land owners and Occupiers about their rights under the Land Access Process.

2.1 Who is a Land owner or Occupier?

Owners or occupiers of land a Carrier wants to inspect, or land on which a Carrier wants to install a Low-Impact Facility or maintain a facility, are Land Owners and Occupiers for the purposes of this Guide.

The term "occupier" is given its ordinary meaning. It 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). With public land, the term "occupier" could sometimes mean the person responsible for the care and management of the land.

2.2 Key things Land Owners and Occupiers need to know about the Land Access Process

- A Carrier has the legal right to install Low-Impact Facilities on land without the consent of Land Owners and Occupiers if the Carrier complies with the rules and requirements of the Land Access Process.
- Under the Land Access Process, the Carrier must give Land Owners and Occupiers 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 8 of the *Australian Postal Corporation (Performance Standards) Regulations 2019*, available here. 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.
- Land owners and Occupiers may consent (or be deemed to have consented) to delivery of Notices by email. Depending on the available evidence, in some circumstances emails will be deemed to have been received as soon as they are able to be opened.
- 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. There are five grounds for objection (see Part 4 of this Guide for details). The reasons for objection may only relate to one or more of those grounds. The Land owner or Occupier **must** notify the Carrier in writing of the grounds of objection and reasons, at least five business days before the activities are due to start. If the Objection is not made on time, the Carrier can install the facilities as proposed, and the TIO will not be able to consider the matter even if the Land owner or Occupier cannot reach agreement with the Carrier about the installation.
- The Land Access Process only deals with certain types of land access issues. If an issue relates to actions taken by a Carrier not covered under the Land Access Process, the TIO may still be able to help through the TIO's general complaint handling service. Contact the TIO for more details.

- Land owners and Occupiers can use the “decision tree” on the next page to help work out whether they have the right to object to a Carrier’s proposal to install Low-Impact Facilities on their land.

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

This decision tree is designed to help Land owners and Occupiers understand whether they can object under the Land Access Process to a Carrier's proposal to install Low-Impact Facilities on their land. Different decision trees apply for inspecting and maintaining facilities once installed – see Part 7 of this Guide for details.

Question 1: Does a Carrier want to access your land to install a Low-Impact Facility?

See Part 3 for details about what a Low-Impact Facility is.

If the answer is "yes", the Carrier has the right to access your land by following the Land Access Process (starting with a Notice of proposed activities).

No → For installation activities, the Land Access Process only covers Low-Impact Facilities.

Yes ↓

Question 2: Have you received a valid Notice of the proposed installation activities?

See Part 5.1(b) of this Guide for details about what a valid Notice is.

If you think that: (a) the facility is not a Low-Impact Facility, or (b) the Notice does not meet the requirements described in Part 3.4(b), you should tell the Carrier.

No → The Carrier cannot install the Low-Impact Facility on your land using the Land Access Process.

Yes ↓

Question 3: Do you have valid grounds for an Objection?

You may have valid grounds for an Objection if you answer "yes" to any of these statements.

- There may be a suitable alternative location outside my land that the Carrier could use to install the proposed facility.
- There may be a suitable alternative location on my land that the Carrier could use to install the proposed facility.
- The proposed timing or duration of the activities is inconvenient or unnecessarily long.
- The proposed installation activities will have a particular impact on the condition (rather than the value or usefulness) of my land.
- I am concerned about a specific type of detriment, inconvenience or damage to the land that could be caused by the proposed installation activities.

No → You cannot object under the Land Access Process. The Carrier has the right to install the facilities as proposed in the Notice.

You may still have important rights when a Carrier installs Low-Impact Facilities, including the right to seek compensation if you suffer financial loss or damage as a result of the installation activities.

Yes ↓

Question 4: Is the Proposed Start Date for the activities more than 5 Business Days from now?

The Proposed Start Date should be listed in the Notice. The Notice is not valid if it does not tell you what the Proposed Start Date is.

(A shorter timeline for Notice applies for inspections of land – see Part 7 of this Guide.)

No → You have missed the deadline for objecting under the Land Access Process. You can object to the Carrier, but the Carrier can choose whether or not to consider your objection.

Yes ↓

Please go to section 1.3 for a summary of the Land Access Process. It includes details about how to object and important deadlines that you need to watch out for.

If you have questions about the Land Access Process, please contact us using the details in Part 9 of this Guide.

3. What is a "Low-Impact Facility"?

Laws and regulations allow Carriers to access public and private land to install equipment and infrastructure that are Low-Impact Facilities. The laws and regulations also allow Carriers to carry out related activities, such as removing existing equipment.

The term "Low-Impact Facility" means any of the specific types of telecommunications equipment and infrastructure ("facilities") set out in the Determination. Low Impact Facilities can include underground cabling, certain overhead cabling, some types of antennas, radio dishes, pits, manholes, pillars, equipment shelters, roadside cabinets and in-building subscriber connection equipment, depending on their dimensions and where they are installed.

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 here.

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

- the type of facility; and
- the principal designated use (i.e., residential, commercial, industrial or rural use) of the land on which the Carrier will install the facility.

Sometimes a Carrier and a Land owner or Occupier may disagree about whether a proposed facility is a "Low-Impact Facility" under the Determination. For more information about the TIO's approach in dealing with these disagreements, please refer to Part 0 of this Guide.

If a Land owner or Occupier is concerned a Carrier is seeking to access its land to install a telecommunications facility that is not a "Low-Impact Facility", the TIO may be able to help. Please refer to Part 0 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"**) involves 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 and Occupiers sometimes disagree with Carriers 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:

- 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
- 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 Objections are valid?

The Land Access Process only allows Land owners and 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 0 to 0 explain what types of issues are covered under each of the five grounds, and Part 0 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).

Part 0 outlines the TIO's approach to considering whether objections are valid and substantiated.

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. There may be a suitable alternative location on other land that the Carrier could use instead."

Explanation: The issue is whether there is an alternative site outside the Land owner or Occupier's land that would allow the Carrier to fulfil its purpose in installing the facility. The Land owner or Occupier will be expected to explain why the use of their land is inconvenient, problematic or not suitable. The Land owner or Occupier will also be expected to point out an alternate location, not on their land, that may be suitable or ask the Carrier whether there is an alternate location that the Carrier might be able to use for 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, a Land owner or Occupier could object and ask the Carrier to consider using that existing facility. The Carrier would then need to consider the Land owner or 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. There may be a suitable alternative location on the land that the Carrier could use instead."

Explanation: The issue is whether there is a suitable alternative location on the Land owner or Occupier's land that could be used to install the proposed facility. The Land owner or Occupier will be expected to explain why the original location is inconvenient, problematic or not suitable. The Land owner or Occupier will also be expected to point out an alternate location on its land that the Carrier could use or ask the Carrier whether there is an alternate location on its land that the Carrier might be able to use for the facility.

Example: If a Carrier proposes to install a conduit running through a Land owner or Occupier's property, a Land owner or 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 or 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 or Occupier to object to the Carrier's proposed installation dates if they are particularly inconvenient for the Land owner or Occupier. The ground also allows them to object to the proposed duration of the installation activities if the Land owner or Occupier considers that the duration exceeds what is reasonably required for the activities.

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

The Carrier would then need to work with the Land owner or Occupier to determine if it is possible to give more specific access dates, or to otherwise minimise the Land owner or Occupier's inconvenience. For example, the Carrier could agree to confirm the access dates with the Land owner or Occupier as soon as the Carrier has sufficient information to know 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 or 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 or Occupier to object on the basis that the facility may affect the Land owner or Occupier's use (or intended use) of the land.

This ground of Objection allows a Land owner or 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 or Occupier to object about a temporary impact on the land that will be fixed once the installation activities are completed.

The Land owner or 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.

The objection may be about the proposed installation's likely effect on or in a **building** (such as an MDF room or riser), rather than on the land itself. Some of the Low-Impact Facilities are facilities that can only be installed on

or in buildings (e.g., internal building subscriber connection equipment, external or internal building connection equipment, in-building coverage installation). The objection may relate to practical and physical impacts that the installation of the facility may have on the building.

Example: A Land owner or 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 or Occupier could object 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 practicable, 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 or Occupier to object if the Land owner or Occupier considers that the Carrier has not implemented sufficient measures to *minimise* detriment and inconvenience, and to do as little damage as practicable, to the land. It does not allow Land owners or Occupiers to object simply because the proposed installation activities will cause detriment, inconvenience or damage to the land.

The Land owner or 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 noted again that an objection may be about the proposed installation's practical or physical impact on a **building**, rather than on the land itself.

Example: A Land owner or Occupier could have concerns about a Carrier's proposal to install underground cabling. This could be 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 or Occupier decides to redevelop the land in the future. If so, the Land owner or 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

Matters that are not valid objections under the Land Access Process	***Explanation of why the matter cannot be raised as a valid objection***
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 or Occupier in order to install a Low-Impact Facility. 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	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

Matters that are not valid objections under the Land Access Process	*Explanation of why the matter cannot be raised as a valid objection*
and a public utility affected by a proposed land access activity	are likely to affect the operations of the utility. This is separate from a Carrier's obligation to issue a Notice to the Land owner and Occupier. Some Land owners and Occupiers who receive a Notice under the Land Access Process also happen to be public utilities, and may view the Notice as diminishing their commercial leverage in negotiating an agreement with the Carrier. 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 separate valid ground of Objection the TIO can consider. The reasons for the Objection may relate only to one or all of the five specific grounds in section 4.30 of the Code. If a Land owner or Occupier believes there is a breach of the Act, they may wish to seek legal advice concerning what other remedies may be available to it under the Act.
Impact on the value of the land, or current/future uses of the land	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 or Occupier cannot object to a proposed facility because it would impact on the Land owner or Occupier's plans for the land (e.g., future redevelopment). If the Land owner or Occupier suffers any financial loss or damage in relation to their property because of the activities, the Land owner or Occupier may be entitled to compensation under the Act. Contact the TIO for further details.
There is already an access agreement in place	The fact that the Carrier (or another carrier) has (or previously had) an access agreement with a Land owner or Occupier will not prevent the Carrier from accessing the land if it has rights to do so under the Land Access Process. A Carrier's rights under the Land Access Process are separate from the Carrier's rights under any access agreement. If a Carrier seeks to use the Land Access Process even though there is an access agreement in place, the Land owner or Occupier should consider whether this breaches the terms of the access agreement. If so, the Land owner or Occupier may be able to complain to the TIO under the TIO's general complaint handling service – see Parts 1.2 and 8 of this Guide for details.
Type of proposed facility	Provided that a proposed facility qualifies as a Low-Impact Facility, Land owners and Occupiers are generally not allowed to object because they think the Carrier should use a different type of Low-Impact Facility.
Visual impact on land or buildings	Section 4.11(3) of the Code requires a Carrier to use best practice to minimise the potential degradation of the visual amenity associated with the facilities. However, the visual impact on land or buildings is not a separate valid ground for objection. The Land owner or Occupier may object if the Carrier's proposal to minimise detriment is not adequate. If the Land owner or Occupier suffers any financial loss or damage in relation to their property because of the activities, the Land owner or Occupier may be entitled to compensation under the Act.

Matters that are not valid objections under the Land Access Process	*Explanation of why the matter cannot be raised as a valid objection*
Too many Low-Impact Facilities in one location	A Land owner or Occupier cannot raise an Objection solely because the Land owner or Occupier considers that there are too many Low-Impact Facilities (e.g., antennas, radio dishes or other facilities) in one location. 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.
Carrier does not intend to co-locate facilities	A Land owner or Occupier cannot object simply because a Carrier does not intend to co-locate a proposed facility with an existing facility. However, the Land owner or Occupier could make an objection about the use of their land to engage in the activity and suggest an existing facility as an alternative location to co-locate the facility. They could also ask the Carrier if there is an alternative location that the Carrier might be able to use for the facility.
Carrier's access or activities may breach easements and similar rights	The Land Access Process does not allow Land owners and Occupiers to object to proposed installation activities because the activities may breach, or cause the Land owner or Occupier to breach, third party rights such as easements. If the Land owner or Occupier is concerned that the proposed activities may breach third party rights such as easements, the Land owner or Occupier should seek independent legal advice.
Risk that the installation activities may breach laws (including health and safety laws)	The Land Access Process does not allow Land owners and Occupiers to object to proposed installation activities on the basis that the activities may breach, or cause the Land owner or Occupier to breach, applicable laws (such as health and safety laws). If the Land owner or Occupier is concerned that the proposed activities may breach applicable laws, the Land owner or Occupier should contact the authorities responsible for administering those laws.
Risk that Land owner or Occupier may damage the Carrier's infrastructure	Land owners and Occupiers sometimes ask Carriers to agree that a Land owner or Occupier will not be responsible if the Land owner or Occupier damages any of the facilities that the Carrier is installing on the Land owner or Occupier's land. A Carrier is under no obligation to agree to this. However, a Land owner or 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, a Land owner or Occupier may consider that there are additional measures the Carrier could implement to reduce the risk of the Land owner or Occupier damaging the Carrier's facility (such as burying cables at a greater depth).

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 Land owners and Occupiers at each stage of the Process.

Carriers often reach agreement with Land owners and 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 owners and Occupiers a written Notice that explains the Carrier's proposed activities and informs Land owners and Occupiers 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 or posting to the Land owner and Occupier's last known address (for natural persons) or registered address, head office, or principal office (for companies).

The Act and the Code also have special provisions that apply where the Land owner or 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, see the table at Regulation 8 of the *Australian Postal Corporation (Performance Standards) Regulations 2019*, available here. 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 by a means that demonstrates the date of posting and delivery, such as a registered, express, or other tracked postal or courier service.

If the Carrier intends to give the Notice by email: If a Carrier wants to send a Notice by email, the TIO recommends Carriers first obtain the Land owner's or Occupier's consent to the information being given by email. Where this has not occurred, the TIO will consider whether the Land owner or Occupier can reasonably be considered to have consented to receiving notices by email, from their conduct. Carriers should also be aware of specific requirements for giving notice to Commonwealth entities by email. Generally, email Notices are taken to be received when they can be opened at an address nominated by the recipient. Therefore, the TIO may not 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 and 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 should state that it is given under Clause 17 of Schedule 3 of the *Telecommunications Act 1997* (Cth).

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;
- detail the Carrier's proposals to cause as little detriment and inconvenience, and to do as little damage as practicable, to the Land owner and Occupier's land;
- advise the Land owner and 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 and Occupier can object to the proposed activities (including the deadline for lodging an Objection, and how the Land owner and 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 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 and 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 and 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 have to give the Notice to individual tenants. In such circumstances it is 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 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 and Occupier's Objection

If a Land owner or Occupier has valid grounds to object to the Carrier's Notice, the Land owner Occupier can make an Objection to the proposed activities by notifying the Carrier in writing at least five business days before the Proposed Start Date.

(d) How does a Land owner or Occupier lodge an Objection to the Notice?

If the Land owner or Occupier has valid grounds for an Objection (see Part 4 of this Guide), the Land owner or 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 or Occupier should read the Notice carefully to ensure the written Objection is sent to the correct address. The TIO considers it good practice for Carriers to provide an email address in the Notice for Land owners and Occupiers to use when lodging written Objections (in addition to any street or postal addresses). If a Land owner or Occupier wants to send the Objection by email and it is not clear from the Notice that Objections can be sent by email, it should contact the Carrier to confirm that the Carrier consents to the Objection being made by email.

Allow sufficient time for the Objection to reach the Carrier: The written Objection must be given by the Land owner or Occupier to the Carrier **at least five business days** before the proposed start date for the activities (this date should also be stated in the Notice). If a Land owner or Occupier is sending their Objection by post, the Land owner or Occupier should allow sufficient time for delivery, and preferably use a means that demonstrates the date of posting and delivery, such as a registered, express, or other tracked postal or courier service.

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 or request the Carrier to consider whether there are suitable alternatives.

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 or Occupier. The Carrier must make reasonable efforts to start the consultation process within the first five business days of the Consultation Period. The Carrier should then continue to try to resolve the Objection through the Consultation Period.

At the end of the Consultation Period, the Carrier must (within five business days of the end of the Consultation Period) give a written End of Consultation Notice that tells the Land owner or 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
- state that if the Land owner or Occupier disagrees with the decision, the Land owner or 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 or Occupier is not satisfied with the End of Consultation Notice, the Land owner or Occupier can write to the Carrier asking the Carrier to refer the Objection to the TIO. This request for referral must be made by a Land owner or Occupier within five business days after receiving the End of Consultation Notice.

(e) 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 or Occupier
- Requesting that the Land owner Occupier provide any alternative proposals if that has not already occurred
- Considering whether there are any suitable alternative proposals (if the Objection relates to the use of the Land owner Occupier's land or the location of the facility on the land)
- Discussing the Carrier's proposals to cause as little detriment and inconvenience, and to do as little damage as practicable, to the Land owner or Occupier's land
- Using reasonable efforts to accommodate the Land owner or Occupier's suggestions
- Explaining the Carrier's rights and obligations under the Land Access Process
- Explaining why the Carrier's proposal adequately addresses the Land owner or Occupier's concerns (if that is the Carrier's position).

Part 3.4(h) of this Guide has more information about how the TIO assesses whether a Carrier has made "reasonable efforts" to resolve an Objection.

(f) What should the Land owner or Occupier usually do during the Consultation Period?

The TIO encourages Land owners and Occupiers to actively participate in the consultation process.

While the Land owner or Occupier has no obligation to work with the Carrier to resolve the Objection, it is likely to be in the interest of the Land owner or Occupier to try to resolve the Objection by agreement.

(g) 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 or Occupier, details of that agreement should be carefully documented by the Carrier. For example, the Carrier could provide the Land owner or Occupier with amended drawings and plans for the activity.

If an agreement is reached such that the Carrier no longer intends to rely of the Notice it has issued, the Carrier must notify the Land owner and Occupier in writing that the Notice is withdrawn by providing the Land owner Occupier with a withdrawal notice ("**Withdrawal Notice**"). The Withdrawal Notice must describe the activity specified in the original notice that has been cancelled and must include a copy of the original notice. The Withdrawal Notice must be given by the Carrier within five business days after the decision to cancel the activity is made.

If the Carrier attempts to resolve the Objection by changing the activity, 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 or Occupier within five business days after the end of the Consultation Period.

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

If the Land owner or Occupier is not satisfied with the Carrier's response as set out in the End of Consultation Notice, they 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.

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

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

- the Objection has no merit; or
- the Land owner or 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.

(j) Can the Carrier refer the Objection to the TIO?

Yes, the Carrier may refer an Objection to the TIO, but only if:

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

(k) Can an Objection be referred to the TIO early?

The TIO generally expects the Carrier to consult with the Land owner or Occupier for the full Consultation Period. However, an Objection may be referred early, such as where the Carrier has in good faith made reasonable efforts to resolve the Objection (see Part 5.3(f) of the Guide, above). If an Objection is referred before the end of the Consultation Period, the TIO will consider whether:

- to defer dealing with the Objection (for example, if the TIO is not satisfied that the Carrier has made reasonable efforts to resolve the Objection with the Land owner or Occupier, until the Carrier has made such efforts); or
- to deal with the Objection (for example, where it is apparent that no purpose would be served by requiring the Carrier to engage in further consultation – such as where the subject matter of the Objection is very similar to a previous land access matter involving the same parties).

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 or 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 or 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 or 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 3.4(d) of this Guide for more information).

The TIO will then assess the Objection and give the Carrier and the Land owner or 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 or Occupier, or a regulator may take).

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 specifies that the Carrier must comply with a request by a Land owner or Occupier to refer the Objection to the TIO within 10 business days after the Carrier receives the Land owner or 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 or Occupier making the Objection, and whether they are 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 or Occupier's Objection, the start of the Consultation Period, the End of Consultation Notice and the Land owner or 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 or Occupier's request to refer the Objection to the TIO and all other correspondence relating to the Objection;
    - evidence of the attempts made by the Carrier to resolve 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

- reports or other documentation relating to reasonable steps that the Carrier considers it has taken to address the Objection.

The referral brief should be e-mailed to landaccess@tio.com.au (marked to the attention of "Land Access Objections").

A copy of the referral brief should also be sent to the Land owner or Occupier at the same time. The Code provides that where a Carrier refers an Objection to the TIO it must give written notice to the Land owner or Occupier that it has referred the matter to the TIO within two business days after referring the matter to the TIO.

(c) Correspondence with the TIO to be copied to the other parties

If the Carrier or the Land owner or Occupier sends 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 or 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 or 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 or 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 or 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 in accordance with the terms of the agreement reached between the Carrier and the Land owner or Occupier.

Where the Land owner or Occupier withdraws the Objection (without reaching an agreement with the Carrier): The Land owner or Occupier can withdraw the Objection at any time before the TIO reaches a Decision

on the Objection. The Land owner or Occupier should notify the TIO and the Carrier in writing that they have 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 or 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 or 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 0 of this Guide);
- whether the Carrier and the Land owner or Occupier have complied with the Land Access Process (see Part 0 of this Guide);
- what administrative procedures it may apply in dealing with the Objection (see Part 6.3 of this Guide);
- whether the grounds set out in the Objection are valid and substantiated (see Part 4 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 6.5 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.

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 or Occupier in writing and will not 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 or Occupier complied with the Land Access Process?

The TIO will consider whether the Carrier and the Land owner or 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
- 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 What kinds of procedures may the TIO apply

In dealing with an Objection there are various administrative procedures that the TIO may apply. Examples of these follow.

(a) Defer dealing with the Objection

The TIO may decide to defer dealing with an Objection. For example, a deferral may apply where:

- the Carrier has not made reasonable efforts to consult with the Land owner or Occupier (see Part 5.3(f) of this Guide for more information); or
- the proposed activity is the subject of litigation.

(b) Dealing with multiple Objections together

The TIO may receive referrals of Objections that concern the same activity, or activity that relates to other activity being dealt with by the TIO. In such circumstances, the TIO may write to the Carrier and Land owner or Occupier to say that the Ombudsman will consider information available across the related Objections, unless either party objects.

Each location where a Carrier proposes to engage in a land access activity and each Objection to that activity will be considered a separate matter for decision. More information for Carriers about fees associated with each matter is available to Carriers in the TIO Member Portal. If a Carrier refers an Objection to the TIO which involves multiple activities that, in the TIO's view, should have been the subject of different Notices, each activity will be treated as a separate matter. The Carrier is still liable to pay the fee applicable for each matter even if the relevant referral is withdrawn.

6.4 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 or Occupier has raised an Objection based on valid grounds (see Part 4 of this Guide); and
- the grounds for Objection can be substantiated.

In assessing the matters described below, the TIO relies on the information provided to it by the Carrier and the Land owner or Occupier. If a Carrier or Land owner or Occupier does not adequately respond to a request by the TIO for information relevant to an Objection, the TIO may take this into consideration when deciding whether to give any direction to a Carrier and what the terms of the direction may be.

(h) Determining whether the grounds for Objection are substantiated

If the TIO is satisfied a Land owner or Occupier has raised an Objection based on valid grounds, the TIO will consider whether the grounds for Objection are substantiated. If the Objection is substantiated, the TIO will consider directing the Carrier to take further steps (including changes to the proposed activities). The TIO can consider factors such as:

- The discussions between the Carrier and the Land owner or Occupier, including any discussions before the Carrier issued the Notice
- Whether the Land owner or 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 :
    - 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"
    - Protect the environment.
- Whether the Carrier can rely on provisions in the Code that say a Carrier is not required to change the proposed activities if doing so would:
    - Not be economically feasible (see Part 3.4(i) of this Guide)
    - Not be technically practicable (see Part 3.4(j) of this Guide)
    - Be likely to have a greater adverse effect on the environment (see Part 3.4(k) of this Guide)
    - Be inconsistent with a recognised industry standard or practice (see Part 3.4(l) of this Guide).

(i) What does "not economically feasible" mean?

Where, for example, the Objection questions whether there is an alternative site or location that could be used for the proposed activity, the TIO will consider whether any alternative approach identified is not economically feasible. To do this, the TIO will review information provided by the Carrier about the costs and benefits of the alternative approach. This may involve considering factors such as:

- The equipment, infrastructure or works that would be required to implement the Land owner or Occupier's proposed approach
- The Carrier's expected installation and on-going maintenance costs in implementing the proposed alternative approach
- The benefits, including different or additional benefits that the proposed alternative 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).

To satisfy the TIO that the proposed alternative approach is "not economically feasible", the Carrier must generally do more than simply point to increased costs. The Carrier must demonstrate that the costs and benefits of the Land owner or Occupier's proposed alternative approach for the installation are such that the Carrier would not install the facilities at that alternative site or location.

The TIO will consider any cost-benefit analysis of the proposed alternative approach. Such analysis may be provided to the TIO by the Carrier or the Land owner or Occupier. Detailed cost-benefit information may assist a Carrier to argue that a proposed alternative 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 originally proposed in the Notice and a proposed alternative approach) into account when considering the overall merits of the Objection. However, the TIO does not consider that inefficiency alone means a proposal is not economically feasible.

(j) What does "not technically practicable" mean?

The TIO's approach to this question is to consider whether, for technical reasons, the Carrier has demonstrated that it would not be able to undertake the activity using the proposed alternative approach. The TIO's approach will be based on the TIO's experience in dealing with telecommunications facility matters as well as information provided by the Land owner or Occupier and Carrier.

For example, the Carrier may argue that it does not have the necessary equipment or expertise to install the facility using the proposed alternative approach.

The TIO may also consider whether the proposed alternative approach would have an unacceptable impact on the quality of the services the Carrier will provide using the facility. Another relevant factor might be 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 proposed alternative approach is "not technically practicable" if the Carrier has demonstrated only that it would be complex or difficult for the Carrier to implement.

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

Many types of installation activities 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
- 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.

The TIO will consider whether changes suggested by the Land owner or Occupier to the Carrier's proposed activities may have an "adverse effect" on the environment (such as soil erosion, weed infestation or water pollution). If the Carrier wishes to argue that a proposed alternative 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 proposed alternative approach will have an "adverse effect" on the environment
- How the effect on the environment of the proposed alternative approach will have a *greater* adverse effect on the environment than the approach in the carrier's original proposal
- How this greater adverse effect on the environment would be reduced (or avoided altogether) by taking the approach in the Carrier's original proposal.

(l) 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 as well as any additional information provided by the Land owner or Occupier and Carrier.

The TIO may consider whether a proposed alternative approach is inconsistent with the Carrier's general obligations when installing Low-Impact Facilities. For example, a Carrier might reasonably decline a Land owner or Occupier's request to lay cabling around the perimeter of the Land owner or Occupier's property where there is already an existing conduit running directly through the Land owner or 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.

(f) What kind of directions does the TIO make?

Where the TIO finds that a ground of Objection is substantiated, it can make a Decision with a direction to the Carrier about the way in which the Carrier should engage in the Low-Impact Facility activity. Sometimes the TIO gives directions to a Carrier even if the Objections are not substantiated. An example of this is when the dates proposed by the Carrier to the activity have passed.

The kinds of directions made by the TIO include:

- Directing the Carrier that it must not engage in the Low-Impact Facility activity described in the Notice
- Directing changes to the way in which the Carrier may engage in the Low-Impact Facility activity. Examples may include:
    - Changes to the date the Carrier may start, engage in, or complete the activity
    - Changes to the location on the Land owner or Occupier's land where a facility may be installed, such as the route of an underground cable or the location of an underground pit or above ground pillar or cabinet;

- Amendments to the Carrier's drawings/plans;
- Requiring the Carrier to provide the Land owner or Occupier with information about the activity, such as details of what and where work was performed (in addition to information the Carrier is required to provide under the Code);

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

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 or 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
- The desirability of promoting outcomes which cause the least detriment, inconvenience and damage overall.

7. Land Access Process for the inspection of land and maintenance of a Facility

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 facilities without the consent of the Land owners and Occupiers.

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

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 and Occupiers understand whether they can object to the proposed land inspection activities is set out in Part 3.4(a) of this Guide.

For more information, see Chapter 2 of the Code.

7.2 Maintenance of a Facility

A Carrier can "maintain" a facility ("**Facility**") installed on land.

It is important to note the definition of a Facility (applicable to maintenance activity) is different to the definition of a Low-Impact Facility (applicable to installation activity).

A Facility means:

- any part of the infrastructure of a telecommunications network; or
- any line, equipment, apparatus, tower, mast, antenna, tunnel duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

The maintenance of a Facility is also given an extended definition, to include, for example:

- altering, removing, or repairing an original Facility;
- ensuring the proper functioning of the original Facility;
- replacing the whole or part of the original Facility in the same location, where certain conditions are satisfied;
- installing an additional Facility in the same location as the original Facility, where certain conditions are satisfied.

The process for these "maintenance activities" is similar to the one described in this Guide about installing Low-Impact Facilities.

As noted above, the definition of maintenance includes installing an additional Facility in the same location as the original Facility. This may involve a Carrier proposing to install a Facility inside a Facility originally installed by

another Carrier. For example, a second Carrier may propose to install a cable inside a duct previously installed, and owned, by another Carrier. In this situation, the TIO expects the second Carrier to provide information to confirm that the Carrier that owns the original Facility consents to the second Carrier installing the additional Facility.

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

For more information, see Chapter 6 of the Code.

7.3 Decision trees – Land inspection activities and maintenance of a Facility

(a) Decision tree: Land inspection activities

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

Question 1: Have you received a valid Notice of the proposed inspection?

The Notice must tell you:

1. Why the Carrier wants to inspect the land.
2. What actions the Carrier will perform as part of the inspection.
3. That compensation may be payable for any financial loss or damage in relation to the land as a result of the inspection.
4. How you can object to the proposed inspection.

In most cases, the Notice must be given to you at least 2 Business Days before the Carrier begins the inspection.

The Notice must be given to you at least 10 Business Days before the Carrier begins the inspection if any of the conditions in paragraph 2.22(4)(b) of the Code apply.

If you think that the Notice does not meet these requirements you should tell the Carrier. If this doesn't resolve the issue, you can complain to the TIO (see Part 9 of this Guide). It is important to note the parties' rights and obligations and timeframes for taking steps, under Schedule 3 and the Code may continue to apply. If you are concerned about your rights over land including the validity of the Notice, you should obtain independent legal advice and monitor time limits.

No →

The Carrier cannot rely on its statutory powers to inspect your land.

Yes ↓

Question 2: Do you have valid grounds for an Objection?

You may have valid grounds for an Objection if you answer "yes" to any of these statements.

- There may be a suitable alternative site outside my land that the Carrier could inspect for its purposes.
- There may be a suitable alternative site on my land that the Carrier could inspect for its purposes.
- The proposed timing/duration of the inspection is inconvenient/unnecessarily long.
- The proposed inspection will have a particular impact on the condition (rather than the value or usefulness) of my land.
- I am concerned about a specific type of detriment, inconvenience or damage to the land that could be caused by the proposed inspection.

No →

You cannot raise an objection under the Land Access Process. The Carrier has the right to conduct the inspection in accordance with the Notice.

You may still have important rights when a Carrier inspects your land, including the right to seek compensation if you suffer financial loss or damage as a

Yes ↓

Question 3: When did you receive the Notice?

If you want to raise an Objection, the Objection must be given to the Carrier:

- Up to nine Business Days after receiving the Notice if the conditions of paragraph 2.22(4)(b) of the Code apply.
- Otherwise, within one business day after receiving the Notice.

The Objection must be given to the Carrier in writing, and must identify the grounds for the Objection (see Question 2 above).

If you have missed the deadline for raising an Objection with the Carrier you can still raise the Objection with the Carrier, but the Carrier can choose whether or not to consider it.

(b) Decision tree: Maintenance of a Facility

This decision tree is designed to help Land owners and Occupiers understand whether they can object to a Carrier's proposed maintenance of a Facility.

Question 1: Does a Carrier want to access your land to maintain a telecommunications Facility?

A telecommunications Facility includes any part of the infrastructure of a telecommunications network.

Facility also has an extended meaning – see Part 7.2 of this Guide

If the answer is "yes", the carrier has the right to access your land by following the Land Access Process (starting with a Notice of proposed activities).

No → The Carrier cannot rely on its statutory powers to access your land.

Yes ↓

Question 2: Have you received a valid Notice of the proposed maintenance activities?

The requirements for a valid Notice of proposed maintenance activities are similar to those set out in Part 3.4(b) of this Guide.

If you think that the Notice does not meet the requirements, you should tell the Carrier. If this doesn't resolve the issue, you can complain to the TIO (see Part 9 of this Guide for contact details). It is important to note the parties' rights and obligations and timeframes for taking steps under Schedule 3 and the Code may continue to apply. If you are concerned about your rights over land including the validity of the Notice, you should obtain independent legal advice and monitor time limits.

No → The Carrier cannot rely on its statutory powers to access your land.

Yes ↓

Question 3: Do you have valid grounds for an Objection?

You may have valid grounds for an Objection if you answer "yes" to any of these statements.

- There may be a suitable alternative location outside my land that the Carrier could use to conduct the maintenance activities.
- There may be a suitable alternative location on my land that the Carrier could use to conduct the maintenance activities.
- The proposed timing/duration of the activities is inconvenient/unnecessarily long.
- The proposed maintenance activities will have a particular impact on the condition (rather than the value/usefulness) of my land.

No →

You cannot raise an Objection under the Land Access Process. The Carrier has the right to conduct the maintenance activities in accordance with the Notice.

You may still have important rights when a Carrier conducts maintenance activities, including the right to seek compensation if you suffer financial loss or damage as a result of the maintenance activities.

Yes ↓

Question 4: Is the Proposed Start Date for the activities more than Five Business Days from now?

The Proposed Start Date should be listed in the Notice. The Notice is not valid if it does not tell you what the Proposed Start Date is.

No →

You have missed the deadline for raising an Objection with the Carrier.

You can raise an Objection with the Carrier, but the Carrier can choose whether or not to consider it.

Yes ↓

You have the right to raise an Objection. The Objection must be given to the Carrier in writing at least 5 Business Days before the Proposed Start Date, and must identify the grounds for the Objection (see Question 3 above).

If you have any questions about the Land Access Process, please contact us using the details in Part 9 of this Guide.

8. Dispute Resolution Jurisdiction

This Guide describes how the TIO handles Objections under the Land Access Process. This jurisdiction is a specific power conferred on the Ombudsman under the Code.

The Ombudsman also has a dispute resolution jurisdiction under the Terms of Reference of TIO Limited. TIO Limited is a public Carriers and other participants in the telecommunications industry. company overseen by a Board of Directors and funded by its members, which include

Under the Terms of Reference, the TIO may handle a Land owner or Occupier's complaint about a Carrier's unsafe or non-compliant infrastructure on the Land owner or Occupier's land. If you would like more details about how the Ombudsman handles complaints, including how to make a complaint:

- see the Terms of Reference of TIO Limited available here; or
- contact the TIO, using the contact details set out in Part 9 of this Guide.

9. 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

10. Useful resources

10.1 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 2021*** **(Cth)**: available here.

  Chapters 2, 4 and 6 of the Code set out the steps and requirements of the Land Access Process - . Chapter 1A sets out additional conditions Carriers must comply with when engaging in land access activity.

- ***Telecommunications Act 1997*** **(Cth)**: available here.

  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)**: available here. The Determination defines what types of telecommunications facilities are Low-Impact Facilities.

10.2 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 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.

- **The Department of Infrastructure, Transport, Regional Development and 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.

11. Glossary

In the Guide, the following definitions apply:

Act means the *Telecommunications Act 1997* (Cth), available here.

Carrier means the holder of a carrier licence, issued under the Act, who proposed to engage in the land access activity.

Code means the *Telecommunications Code of Practice 2021* (Cth), available here.

Consultation Period means the period during which the Carrier must make reasonable efforts to resolve the Objection with the Land owners and Occupiers.

Decision means a decision made by the TIO dealing with an Objection.

Determination means the *Telecommunications (Low-impact Facilities) Determination 2018* (Cth), available here.

End of Consultation Period means the end of the Consultation Period.

Facility has the meaning given in clause 7 of Schedule 3 of the Act, available here.

Land Access Process means the process in Schedule 3 of the Act and the Code pursuant to which a Carrier may enter on land to exercise a power to: (a) inspect the land to determine whether the land is suitable for the carrier's purposes; (b) to install a facility on the land; (c) to maintain a facility that is situated on the land.

Land owner means an owner of land on which the land access activity is proposed by the Carrier.

Occupier means the occupier of the land on which the land access activity is proposed by the Carrier (if the land is occupied by a person other than the owner).

Low-Impact Facility has the meaning given in the Determination.

Notice means a written notice given by a Carrier to Land owners and Occupiers notifying that the Carrier intends to exercise its statutory rights to access the land under the Land Access Process.

Objection means an objection given by a Land owner or Occupier to an activity described in a Notice.

Proposed Start Date means the date when the Carrier proposes to start the activities described in a Notice.

Terms of Reference means the Terms of Reference of TIO Limited, available here.

TIO or **Ombudsman** means the Ombudsman appointed by TIO Limited under its constitution, available here.

TIO Limited means the Telecommunications Industry Ombudsman Limited (ABN 46 057 634 787).

Withdrawal Notice means a notice by the Carrier that it cancels the activity proposed in the Notice.