



Australian Government
**Australian Communications
and Media Authority**

Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications

www.acma.gov.au

Guide to Applying for a Facility Installation Permit

June 2007

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Guide to applying for a facility installation permit

A facility installation permit (FIP) is a written instrument issued by the Australian Communications and Media Authority (ACMA) to a licensed carrier, providing authorisation for that carrier to proceed with installation of one or more specified telecommunications facilities in circumstances where it has not obtained all the administrative authority and proprietor approvals required under relevant state and territory legislation.

ACMA is empowered to issue such permits on a case-by-case basis under Division 6 of Part 1 of Schedule 3 to the *Telecommunications Act 1997* ('the Telecommunications Act'). The effect of the permit is that it would be assumed that the required administrative authority and proprietor approvals had been given for the installation of the specified facilities.

Key features of a facility installation permit are summarised below.

Facility installation permit: key features

- An FIP authorises a licensed telecommunications carrier to install specified facilities thereby substituting for the approvals required under relevant state or territory legislation.
- A single FIP can cover installation of telecommunications facilities at multiple locations where they form part of a telecommunications network of national significance.
- A permit comes into force on the date that it is issued and remains in force until the end of the period specified in the permit.
- ACMA may, by written notice, extend the period of a permit if it is satisfied that the extension is warranted because of special circumstances.
- A permit is issued subject to any conditions specified by ACMA in the permit and the carrier must comply with such conditions.
- A permit has effect subject to the Telecommunications Act and installation of the specified facilities is subject to legislative conditions imposed on carriers.
- A breach of a condition of a permit may constitute a breach of the Telecommunications Act and thereby be subject to pecuniary penalties provided under the Act.
- The holder of a permit may, at any time by written notice to ACMA, surrender that permit.

ACMA may, by written notice to the holder, cancel a permit noting that any such decision would be subject to merits review by the Administrative Appeals Tribunal (AAT).

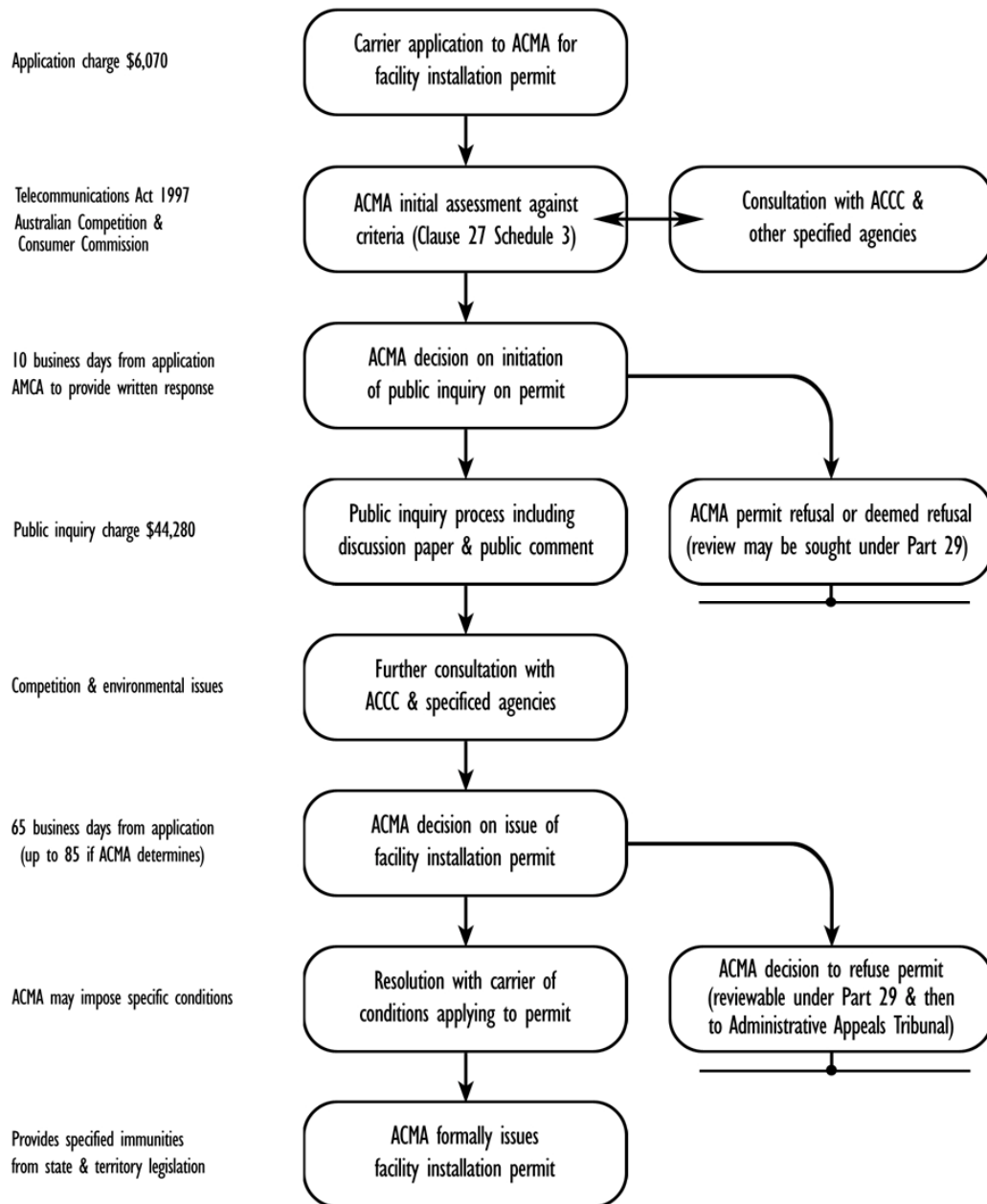
PERMIT ISSUE PROCESS

The FIP issue process involves a case-by-case consideration of proposals for installation of important facilities forming part of a telecommunications network of national significance. The process can be activated by an application to ACMA from a licensed carrier in circumstances where the carrier has been unable to secure all approvals required under relevant state and territory legislation.

The FIP process has been provided under the Telecommunications Act as a safeguard mechanism to ensure the Australian Government's policy in relation to carrier powers and immunities strikes the right balance between the sometimes conflicting aims of:

- encouraging investment in infrastructure to meet the growing demand for new telecommunications services and facilitating further competition; and
- addressing the legitimate concerns of local communities about the effect of the rollout of telecommunications infrastructure in their local environment.

Figure 1: Overview of application and assessment process



ACMA can only proceed to issue an FIP where it is satisfied after public inquiry that the proposed installation of facilities meets the statutory criteria (see below). An application for an FIP must include a submission demonstrating how the proposed installations satisfy the statutory criteria. The Telecommunications Act explicitly provides that ACMA may refuse to issue a permit without public inquiry where the application does not disclose grounds on which it could be issued.

Facility installation permit: assessment criteria

1. The carrier has made reasonable efforts to negotiate in good faith all the administrative authorities and proprietor approvals required for carrying out the installation of the

facilities covered by the application.

2. The greater part of the infrastructure of the telecommunications network to which the specific facilities relate has either already been installed or the administrative authorities required for its installation have been given or are reasonably likely to be given.
3. The telecommunications network to which the specific facilities relate is, or is likely to be, of national significance having regard to:
 - a. the geographical reach of the network;
 - b. the number of customers connected, or likely to be connected;
 - c. the importance of the network to the national economy;
 - d. such other indicators of national significance that may be relevant.
4. The specific facilities represent, or are likely to represent, an important part of the respective network having regard to either of:
 - e. the technical context of the network;
 - f. the economic context of the network; or
 - g. the social context of the network.
5. Installation and operation of the specific facilities as part of the respective network will produce advantages to the community having regard to:
 - h. the long-term interests of end-users;
 - i. the timely supply of competitive carriage services to the public;
 - j. contribution to the fulfilment of the universal service obligation;
 - k. co-location, or future co-location, with one or more other facilities;
 - l. other additional technical, economic or community contributions.
6. The identified advantages of the specified facilities outweigh any potential environmental degradation having regard to:
 - m. the visual effect on streetscapes or other landscapes;
 - n. any adjacent area, place or thing that is identified, protected, reserved, or listed under a Commonwealth, state or territory instrument;
 - o. any potential effect on a threatened species or an endangered ecological community;
 - p. any adjacent area, place or thing of significance to Indigenous Australians;
 - q. any relevant Australian obligations under a listed international agreement;
 - r. any other particular matter of local environmental significance.

ADMINISTRATION PROCESS

ACMA's Manager of EME and Telecommunications Infrastructure Section is responsible for the overall administration of the FIP process. In considering specific applications, ACMA may constitute an expert evaluation group headed by a designated ACMA officer and including officers of other Commonwealth departments and

agencies, such as the Australian Competition and Consumer Commission (ACCC) (competition issues) and the Department of the Environment and Water Resources (DEWR) (environmental issues).

ACMA will determine the specific arrangements to apply to consideration of a particular application on a case-by-case basis.

Evaluation of an application for an FIP will be undertaken in three distinct phases:

- **Application Phase**—commencing with receipt of an application from a licensed carrier and ending with ACMA’s decision to either refuse the application or to proceed to a public inquiry as required by the Telecommunications Act. See key points relating to the Application Phase below.
- **Public Inquiry Phase**—commencing with ACMA’s decision to proceed to a public inquiry and ending with ACMA’s decision to either refuse the carrier's application or in-principle endorsement of issue of the permit subject to negotiation with the carrier of acceptable terms. See key points relating to the Public Inquiry Phase below.
- **Permit Issue Phase**—commencing with ACMA’s in-principle decision to issue a permit and concluding with formal issue of the permit incorporating any conditions imposed by ACMA to address specific issues identified during the Public Inquiry Phase. ACMA will undertake detailed negotiations with the respective carrier to resolve the terms of the permit to both ACMA’s and the carrier’s satisfaction. See key points relating to the conditions that might be included in a permit below.

Application Phase – key points

- The application must be in writing in the form specified at Attachment A.
- A person making application on behalf of a licensed carrier must provide ACMA with written authorisation issued by the carrier.
- The application must include supporting evidence that the proposed installations meet the assessment criteria.
- The application must be accompanied by payment of the \$6,070 application charge.
- Receipt of the application will be acknowledged by ACMA in writing.
- An incomplete application will be returned with the payment and an explanatory letter.
- An application may be withdrawn and resubmitted as a new application.
- ACMA will consult with the ACCC about each application it receives.
- The applicant will be notified within 10 business days following receipt of the application where ACMA decides to proceed with a public inquiry.
- Where such notification is not provided within 10 business days the application is deemed to be rejected.
- ACMA will provide the applicant with a written notice setting out the basis of its decision to reject an application without a public inquiry.
- The Telecommunications Act provides for the applicant to request ACMA to reconsider its decision.

- The Telecommunications Act provides that a reconsideration decision is reviewable by the Administrative Appeals Tribunal.

Public Inquiry Phase – key points

- ACMA is required under the Telecommunications Act to hold a public inquiry prior to issuing an FIP.
- ACMA will notify the applicant of its intention to proceed with a public inquiry and request payment of the \$44,280 charge within the specified period (five business days or such longer period as ACMA may agree).
- Failure to pay the inquiry charge will result in the application being deemed to have been withdrawn.
- ACMA will notify the applicant of its decision whether to issue a permit within 65 business days following receipt of the application (or such longer period up to a maximum of 85 days as ACMA may determine).
- Where such notification is not provided within the period of 65 days or any determined extended period, the application for a permit is deemed to have been refused by ACMA.
- ACMA must provide the applicant with written notice of its decision to reject an application.
- ACMA will consult the ACCC and DEWR about each application that proceeds to public inquiry.
- ACMA will consult as required with other Commonwealth departments and agencies, including the Director of National Parks and Wildlife and the Australian Heritage Commission.
- ACMA will prepare a discussion paper as part of the public inquiry, which will provide background on the application and highlight particular aspects identified in ACMA's initial consideration.
- ACMA will ensure adequate public notification of the inquiry, including contact details, deadlines for submissions (at least 28 days) and any public hearings that it has arranged.
- ACMA will take appropriate steps to safeguard any confidential information disclosed in the application or provided in the course of the evaluation process.

Permit Issue Phase – key points

- ACMA will provide the applicant with written notification of its decision to issue a permit including any conditions it proposes to include within the permit.
- ACMA will seek to reach a negotiated agreement on the terms and conditions included within the permit.
- Conditions included within a permit may restrict, limit or prevent the carrying out of certain activities in relation to the specified facilities that the carrier may otherwise be able to carry out under the Telecommunications Act.
- A permit comes into force on the date that it is issued and remains in force until the end of the period specified in the permit.

- ACMA may, by written notice, extend the period of a permit if it is satisfied that the extension is warranted because of special circumstances.
- A permit is issued subject to any conditions specified by ACMA in the permit and the carrier must comply with such conditions.
- A permit has effect subject to the Telecommunications Act and installation of the specified facilities is subject to the legislative conditions imposed on carriers under the Act in respect to the installation of facilities.
- A breach of a condition of a permit constitutes a breach of the Telecommunications Act and thereby may leave the carrier liable to pecuniary penalties provided for under the Act.
- The holder of a permit may, at any time by written notice to ACMA, surrender that permit.
- ACMA may, by written notice to the holder, cancel a permit noting that any such decision would be subject to merits review by the AAT.

EVALUATION OF FACILITY INSTALLATIONS AGAINST CRITERIA

An application for an FIP must include a submission demonstrating how the proposed installations satisfy the statutory criteria summarised above. ACMA can only proceed to issue an FIP where it is satisfied after public inquiry that the proposed facility installations meet the statutory criteria.

In considering an application, ACMA will take all relevant factors into account and reach its decision on the merits of the case made by the applicant.

The application form approved by ACMA is at Attachment A. It includes a requirement for the applicant to provide a comprehensive submission including necessary supporting evidence and expert reports establishing the grounds for ACMA to issue an FIP.

The following notes against each of the specific criteria listed in the Telecommunications Act are provided for the guidance of applicants. The legislative references refer to Part 1 of Division 6 in Schedule 3 to the Telecommunications Act (Attachment B).

1. The carrier has made reasonable efforts to negotiate in good faith all the administrative authorities and proprietor approvals required for carrying out the installation of the specific facilities covered by the application.

Subclauses 27(1)(e) and (f) of Schedule 3 to the Telecommunications Act state that ACMA must be satisfied that the applicant carrier has met specified conditions depending on whether the facilities do or do not consist of designated overhead lines. These conditions require carriers to have made reasonable efforts to negotiate the required proprietor and administrative authority approvals.

The submission to be included as part of the application must include evidence to substantiate claims against this criterion, including copies of relevant correspondence relating to negotiations undertaken in respect of sub-clauses 27(2) and/or 27(2A).

For the purposes of subclause 27(1)(c), ACMA takes the view that an appeal body properly constituted under a state or territory law is a relevant ‘administrative authority’. This interpretation may arise in relation to the question of whether a carrier may apply for a permit in circumstances where an application to install a designated overhead line has been refused by a local council, but subsequently approved by an

appropriate body on appeal—that is, the Telecommunications Act does not take away the rights a carrier may have under state law to appeal from an adverse decision by a local council.

2. *The greater part of the infrastructure of the telecommunications network to which the specific facilities relate has either already been installed or the administrative authorities required for its installation have been given or are reasonably likely to be given.*

Subclause 27(1)(c) of Schedule 3 to the Telecommunications Act requires that any one or more of the following three specified conditions be satisfied, that is:

- the greater part of the infrastructure of the telecommunications network to which the facilities relate has already been installed; or
- the greater part of the infrastructure has not been installed, but each administrative authority whose approval was required or would, apart from Division 3 be required, has given, or is reasonably likely to give, such approval; or
- no part of the infrastructure has been installed, but each administrative authority whose approval was required or would, apart from Division 3. be required has given or is reasonably likely to give such approval.

Applicant submissions must include evidence substantiating claims against one or more of these conditions including justification for any assertion that approval is ‘reasonably likely’ to be given by relevant administrative authorities. The relevant administrative authorities should be listed and copies of any written indications of approval appended.

3. *The telecommunications network to which the specific facilities relate is, or is likely to be, of national significance having regard to:*

- a. the geographical reach of the network;***
- b. the number of customers connected, or likely to be connected;***
- c. the importance of the network to the national economy;***
- d. such other indicators of national significance that may be relevant.***

Subclause 27(1)(a) of Schedule 3 to the Telecommunications Act requires ACMA be satisfied that the telecommunications network to which the facilities relate is or is likely to be of national significance. Sub-clause 27(3) lists specific matters that must be considered in relation to this criterion. In this context, ACMA accepts the position that the concept of ‘network’ is not limited to that part of a network actually owned by the applicant carrier but may be taken to include components leased from other carriers.

ACMA also accepts that geographical reach is not the sole indicator of ‘national significance’ and is prepared to consider justification for assigning additional weight to other matters in particular cases. For example, a new local loop network in the CBD area of a major Australian city may arguably be of national significance because of its importance to competition and the national economy rather than because of its geographical size. Applications must include evidence supporting any such arguments.

4. *The specific facilities represent, or are likely to represent, an important part of the respective network having regard to either of:*

- a. the technical context of the network;***
- b. the economic context of the network; or***

c. the social context of the network.

Subclause 27(1)(b) of Schedule 3 to the Telecommunications Act requires that the specified facilities are, or are likely to be, an important part of the telecommunications network to which they relate. Subclause 27(4) provides that, in determining this matter, ACMA must be satisfied in respect of at least one of their technical importance, economic importance, or social importance to the respective network.

Applicant submissions should present an evaluation of each of the technical, economic and social importance of the specified facilities in the context of the respective network, to provide a comprehensive basis for ACMA's determination under this criterion.

5. Installation and operation of the specific facilities as part of the respective network will produce advantages to the community having regard to:

a. the long-term interests of end-users;

Subclause 27(5)(a) of Schedule 3 to the Telecommunications Act provides that in determining whether the advantages of the facility outweigh degradation of the environment, ACMA is required to have regard to the extent to which the installation of the facilities is likely to promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services. Subclause 27(6) provides that the question of whether a particular thing promotes the long-term interests of end-users is to be determined in the manner of Part XIC of the *Trade Practices Act 1974*—that is, by assessing whether they are likely to achieve the objectives of:

- promoting competition in telecommunications markets;
- achieving any-to-any connectivity (i.e. ensuring communication between users of different networks); and
- encouraging the economically efficient use of, and investment in, infrastructure.

Applicant submissions should present an evaluation of the extent to which the specified facility installations promote each of these objectives, to provide a comprehensive basis for ACMA's determination under this criterion.

5. Installation and operation of the specific facilities as part of the respective network will produce advantages to the community having regard to:

b. the timely supply of competitive carriage services to the public;

Subclause 27(5)(c) of Schedule 3 to the Telecommunications Act provides that in determining if the advantages of the facility outweigh degradation of the environment, ACMA is required to have regard to the objective of facilitating the timely supply of efficient, modern and cost-effective carriage services to the public. For example, where a significant function of the rollout of a cable network is not only to provide the capacity for subscription television, but also telephony services in competition with established facilities-based competitors, such a strategy may be considered to serve the objective of providing an efficient and cost-effective telecommunications service through facilities-based competition.

Applicant submissions should present an evaluation of the extent to which the specified facility installations contribute to this criterion.

5. Installation and operation of the specific facilities as part of the respective network will produce advantages to the community having regard to:

c. contribution to the fulfilment of the universal service obligation;

Subclause 27(5)(e) of Schedule 3 to the Telecommunications Act provides that, in determining whether the advantages of the facility outweigh degradation of the environment, ACMA is to have regard to whether the ‘installation of the facilities contributes to the fulfilment by the applicant of the universal service obligation’.

The reference to universal service obligation (USO) means that this criterion will only be relevant in respect of facility installations to be used to provide standard telephone services, payphones and prescribed carriage services. It may only be relevant in circumstances where an application for an FIP is made by Telstra.

In circumstances where this criterion is relevant, applicant submissions should include details regarding the applicant carrier’s USO status and, where it does not have such status, explanation as to how the installation of the specified facilities contribute to fulfilment of the USO. Otherwise, this criterion need not be addressed in the submission.

5. Installation and operation of the specific facilities as part of the respective network will produce advantages to the community having regard to:

d. co-location, or future co-location, with one or more other facilities;

Subclause 27(5)(f) and (g) of Schedule 3 to the Telecommunications Act provide that, in determining whether the advantages of the facility outweigh degradation of the environment, ACMA is required to have regard to whether the installation involves co-location with one or more facilities, or facilitates co-location or future co-location with one or more facilities.

Generally, the co-location of facilities is considered to be less environmentally degrading than the installation of separate stand-alone facilities, but because this is not universally the case, ACMA will consider this criterion on a case-by-case basis.

ACMA notes that Part 5 of Schedule 1 to the Telecommunications Act obliges carriers to provide other carriers with access to towers, sites of towers and eligible underground facilities. Co-location includes those arrangements entered into by carriers about access to eligible facilities (as defined in Part 5 of Schedule 1 to the Telecommunications Act). Carriers installing facilities under an FIP are bound by the obligation in Part 5 of Schedule 1.

The applicant’s submission under this criterion should therefore provide information about any request the applicant carrier is making for access to existing facilities and sites of facilities, as well as describing opportunities afforded by the proposed facilities for other carriers to co-locate facilities on the proposed facility installations.

The submission should also indicate whether there are any existing carrier facilities or sites in the vicinity of the proposed facility installations that are suitable for co-location and, if so, whether the applicant carrier has requested the owning carrier to provide access under Part 5 of Schedule 1 to the Telecommunications Act.

5. Installation and operation of the specific facilities as part of the respective network will produce advantages to the community having regard to:

e. other additional technical, economic or community contributions.

Applicants should highlight any other technical, economic or community contributions of the proposed facility installations that have not been included elsewhere in the

submission. ACMA will take all relevant factors into account in order to determine each case on its merits. Applicants are therefore encouraged to provide any additional information that is considered relevant.

ACMA will also have regard to the objects of the Telecommunications Act and to the extent which proposed facility installations promote the achievement of such objects. An applicant submission should therefore highlight any additional contributions towards one or more of the objects of the Telecommunications Act.

It may be relevant to include under this criterion any contributions towards the object of encouraging ‘the efficiency and international competitiveness of the Australian telecommunications industry’.

- 6. *The identified advantages of the specified facilities outweigh any potential environmental degradation having regard to:***
- a. the visual effect on streetscapes or other landscapes;***
 - b. any adjacent area, place or thing that is identified, protected, reserved, or listed under a Commonwealth, state or territory instrument;***
 - c. any potential effect on a threatened species or an endangered ecological community;***
 - d. any adjacent area, place or thing of significance to Indigenous Australians;***
 - e. any relevant Australian obligations under a listed international agreement;***
 - f. any other particular matter of local environmental significance.***

Subclause 27(5)(b) of Schedule 3 to the Telecommunications Act provides that, in determining whether the advantages of the facility outweigh degradation of the environment, ACMA is required to have regard to the impact of the installation, maintenance or operation of the facilities on the environment. In determining its position on this matter, ACMA must have regard to the factors set out under subclause 27(7) relating to impact on Australian flora and fauna, heritage, and national estate values and visual effect on the landscape.

Applicant submissions must highlight any aspects of the proposed facility installations that are likely to contribute to environmental degradation. Copies of environmental information or assessments should be attached to the submission, including all those prepared by or on behalf of state or territory authorities. The submission should explicitly address any such assessments that contributed to the failure to secure required local authority approvals.

COMPLIANCE AND REVIEW

Compliance with facility installation permit conditions

Clause 16 of Schedule 3 to the Telecommunications Act explicitly provides that a carrier must fully comply with all conditions included within an FIP when engaging or proposing to engage in any activity authorised by that permit.

Issuance of directions in relation to performance

Section 581 of the Telecommunications Act gives ACMA the power to give written directions to a carrier in connection with performing any of ACMA’s

telecommunications functions or exercising any of the ACMA's telecommunications powers. A carrier must comply with a direction given by the ACMA under this section of the Act.

Breach of a condition of a facility installation permit

A breach of a condition of an FIP is a contravention of the Telecommunications Act and thereby also constitutes a breach of a carrier licence condition under Part 1 of Schedule 1 to the Act. ACMA may issue formal warnings regarding the breach of a carrier licence condition or remedial directions requiring action to ensure further breaches do not occur. Carriers must not contravene a direction issued by the ACMA.

Cancellation of a facility installation permit

ACMA may cancel an FIP by giving written notice to the holder of the permit. In making a decision to cancel a permit, ACMA may consider any contravention of Division 5 (which specifies the conditions relating to the activities engaged in under Divisions 2, 3, or 4, being inspection of land, installation and maintenance activities), any matter that ACMA was entitled to have regard to in deciding whether to issue the permit—that is, the criteria for issue of a FIP—and any other matters that ACMA deems relevant.

Surrender of facility installation permit

A carrier may, by written notice given to ACMA, surrender a FIP held by the carrier at any time.

Guidelines regarding performance of functions and exercise of powers

ACMA may, by written instrument, formulate guidelines to assist in its performance of functions and exercise of powers conferred by Part 1 of Schedule 3 to the Act. If there are guidelines in force, ACMA must have regard to them, as well as to any other matters it considers relevant. To date, ACMA has not formulated such guidelines.

Reviewable decisions of the ACMA

Part 29 of the Act provides that certain decisions made by ACMA may be reviewed by the Administrative Appeals Tribunal (AAT), following a process of internal reconsideration by ACMA. A decision to cancel a FIP may be subject to AAT review under this Part (see Schedule 4 to the Act).

Clause 35 of Schedule 3 to the Act provides that where ACMA has made a decision to refuse to issue a permit without holding a public inquiry, the carrier may seek review of that decision by the AAT.

MORE INFORMATION

For more information and clarification about the facility installation permit process, contact ACMA's EME and Telecommunications Infrastructure Section as follows:

The Manager
EME and Telecommunications Infrastructure
Regulation and Compliance Branch
Australian Communications and Media Authority
PO Box 78
Belconnen ACT 2616
Telephone: (02) 6219 5555
Facsimile: (02) 6219 5288

Email: infrastructure@acma.gov.au
Website: www.acma.gov.au



Application for facility installation permit

June 2007

Information for applicants

Print clearly. Illegible, unclear or incomplete application forms may delay processing.

The *Guide to applying for a facility installation permit* should be read before completing this application.

All applicants MUST enclose with their completed application form:

- a submission describing the facilities for which the facility installation permit is sought and addressing the criteria set out in clause 27 of Schedule 3 to the *Telecommunications Act 1997* in respect of which ACMA must be satisfied before issuing a permit—guidance on the requirements for preparing such a submission is provided in the *Guide to applying for a facility installation permit*; and
- a cheque to the sum of \$6,070 payable to the Australian Communications and Media Authority (ACMA), being the application charge that must accompany an application for a facility installation permit—this amount is prescribed in the *Telecommunications (Facility Installation Permit – Application Charge) Determination 2007*.

Additional information in support of the application

Applicants are requested to provide any additional information that they consider may be relevant to consideration of their application. ACMA may also request additional information or clarification of particular matters during its consideration of an application.

The completed form should be forwarded to:

The Manager
 EME and Telecommunications Infrastructure
 Regulation and Compliance Branch
 Australian Communications and Media Authority
 PO Box 78 Belconnen ACT 2616
 Telephone: 02 6219 5555; Fax: 02 6219 5288
 Email: infrastructure@acma.gov.au.

More information

More information about the facility installation permit process may be obtained from the Manager of ACMA's EME and Telecommunications Infrastructure Section on telephone (02) 6219 5555. Applicants are encouraged to contact the manager before lodging an application.

Applicant's details

Australian Company Number (ACN) or Australian Registered Body Number (ARBN) or Australian Business Number (ABN) (if applicable)

Registered business name of applicant

Trading name (if any) of applicant

Registered address

<input type="text"/>	
<input type="text"/>	POSTCODE

Postal address

<input type="text"/>	
<input type="text"/>	POSTCODE

Contact name and title

CONTACT NAME
TITLE

Telephone number

Facsimile

Date carrier licence granted

Application

The person described above **applies** for a facility installation permit under clause 21 of Schedule 3 to the *Telecommunications Act 1997*.

Declaration

I declare that:

- a) the applicant is able to apply for the permit within the meaning of clause 21 of Schedule 3 to the *Telecommunications Act 1997*; and
- b) the applicant is not disqualified within the meaning of section 58 of the *Telecommunications Act 1997*; and
- c) the applicant has not ceased to be a constitutional corporation, an eligible partnership or a public body; and
- d) the contents of this application and any enclosures are true and correct; and
- e) I have the authority to sign this application on behalf of the applicant.

Signed for and on behalf of the applicant

SIGNATURE
PRINT NAME
POSITION IN COMPANY
DATE

[Note: The information that must be provided on or with this form is being sought under clauses 21 and 22 of Schedule 3 to the *Telecommunications Act 1997* for the purpose of considering applications for facility installation permits under that Act].

Checklist

Applicants must attach the following documentation to their application form and indicate which legislative provisions are relevant to their application on the table below:

1. Form and application charge

- Completed and signed application form (including carrier contact details).
- Cheque for \$6,070 made out to the Australian Communications and Media Authority, being the application charge that must accompany an application for a facility installation permit.

2. Documents/information

- Submission demonstrating how the proposed installations satisfy the statutory criteria set out in Clause 27 of Schedule 3 to the *Telecommunications Act 1997*.
- Supporting evidence and expert reports necessary to establish the grounds on which a facility installation permit could be issued.
- All other information and factors relevant to the merits of the case for issuing a permit.

3. Additional items

- A description of the facility's purpose and the services proposed to be provided.
- Details of any community consultation completed before applying for a facility installation permit.

4. Legislative checklist

- Completed copy of the table below.
- Indicate in the third column whether each of the respective detailed criteria listed in Clause 27 is applicable to the present application.
- Indicate in the fourth column the page number of the submission on which the corresponding criteria has been addressed.

The legislative references below relate to Part 1 of Division 6 in Schedule 3 to the *Telecommunications Act 1997*.

Reference	Addressed in submission (indicate Y/N and page no.)	Applicable	Page no.
27(1)(a)	network of national significance	YES	NO
27(1)(b)	facilities an important part of the related network	YES	NO
27(1)(c)(i)	greater part of network infrastructure installed	YES	NO
27(1)(c)(ii)	greater part not installed but approvals given/likely to be given	YES	NO
27(1)(c)(iii)	none of network installed but approvals given/likely to be given	YES	NO
27(1)(d)	likely advantages outweigh degradation of environment	YES	NO
27(1)(e)	none of the facilities are designated overhead lines	YES	NO
27(1)(f)	one/all of the facilities is a designated overhead line	YES	NO
27(1)(g)	facility proposed to be located near a community sensitive site	YES	NO
27(2)	facilities other than designated overhead lines	YES	NO
27(2)(a)(i)	negotiation with proprietor	YES	NO
27(2)(a)(ii)	negotiation with administrative authorities	YES	NO
27(2)(b)(i)	at least one approval not obtained within 20 (b) to (d)	YES	NO
27(2)(b)(ii)	at least one approval not obtained within 6 months	YES	NO
27(2)(b)(iii)	at least one approval has been refused	YES	NO
27(2A)	designated overhead lines	YES	NO
27(2A)(a)	negotiation with proprietor	YES	NO
27(2A)(b)	at least one approval not obtained within 20 (b) to (d)	YES	NO
27(2A)(c)	each administrative authority has given approval	YES	NO
27(3)(a)	geographical reach of network	YES	NO
27(3)(b)	number of customers connected to network	YES	NO
27(3)(c)	importance of network to national economy	YES	NO
27(3)(d)	such other matters as considered relevant	YES	NO
27(4)(a)	technical importance of the facilities	YES	NO
27(4)(b)	economic importance of the facilities	YES	NO
27(4)(c)	social importance of the facilities	YES	NO

27(5)(a)	long-term interests of end-users	YES	NO	
27(5)(b)	impact of installation on environment	YES	NO	
27(5)(c)	timely supply of services to the public	YES	NO	
27(5)(d)	relevant technical or economic aspects	YES	NO	
27(5)(e)	contribution of installation to USO	YES	NO	
27(5)(f)	whether installation involves co-location	YES	NO	
27(5)(g)	whether installation facilitates co-location	YES	NO	
27(5)(h)	such other matters as considered relevant	YES	NO	
27(6)	long-term interests of end-users	YES	NO	
27(7)(a)(i)	installation inconsistent with international agreement	YES	NO	
27(7)(a)(ii)	threatened species extinction or recovery significantly impeded	YES	NO	
27(7)(a)(iii)	risk of species becoming threatened	YES	NO	
27(7)(a)(iv)	adverse effect on threatened species	YES	NO	
27(7)(a)(v)	habitat of threatened species	YES	NO	
27(7)(a)(vi)	ecological community essential to existence of threatened species	YES	NO	
27(7)(a)(vii)	endangered community threatened with extinction	YES	NO	
27(7)(a)(viii)	adverse effect on endangered community	YES	NO	
27(7)(a)(ix)	damage to habitat of endangered community	YES	NO	
27(7)(a)(x)	adverse effect on a listed migratory species	YES	NO	
27(7)(a)(xi)	impact on environment in a Commonwealth marine area.	YES	NO	
27(7)(a)(xii)	impact on environment on Commonwealth land.	YES	NO	
27(7)(b)	visual effect of facilities	YES	NO	
27(7)(c)(i)	within s.3A of World Heritage Properties Conservation Act 1983	YES	NO	
27(7)(c)(ii)	place protected by an international agreement	YES	NO	
27(7)(c)(iii)	area reserved for nature conservation	YES	NO	
27(7)(c)(iv)	area protected from significant environmental disturbance	YES	NO	
27(7)(d)(i)	installation at/near place in Register of the National Estate (RNE)	YES	NO	
27(7)(d)(ii)	installation at/near place on Interim List of RNE	YES	NO	
27(7)(d)(iii)	installation at/near place registered under a heritage law	YES	NO	
27(7)(d)(iv)	place of significance to Aboriginals or Torres Strait Islanders	YES	NO	
27(7)(e)	such other matters as considered relevant	YES	NO	

ATTACHMENT B

Part 1 of Division 6 in Schedule 3 to the Telecommunications Act 1997

Act No. 47 of 1997 as amended

[Extracted from compilation of Act prepared by the Office of Legislative Drafting and Publishing, Attorney-General's Department, Canberra on 31 May 2007 taking into account amendments up to Act No. 155 of 2006]

Division 6—Facility installation permits

21 Application for facility installation permit

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

22 Form of application

An application must be:

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

23 Application to be accompanied by charge

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

24 Withdrawal of application

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

25 Issue of facility installation permit

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

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

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

26 Deemed refusal of facility installation permit

- (1) If:
 - (a) the ACMA receives an application for a facility installation permit; and
 - (b) 10 business days pass and the ACMA has neither:
 - (i) notified the applicant in writing that the ACMA has decided to refuse to issue the permit; nor
 - (ii) notified the applicant in writing that the ACMA has decided to hold a public inquiry in relation to the permit;the ACMA is taken, at the end of that period of 10 business days, to have decided to refuse to issue the permit.
- (2) If:
 - (a) the ACMA receives an application for a facility installation permit; and
 - (b) 65 business days pass and the ACMA has neither:
 - (i) notified the applicant in writing that the ACMA has decided to refuse to issue the permit; nor
 - (ii) notified the applicant in writing that the ACMA has decided to issue the permit;the ACMA is taken, at the end of that period of 65 business days, to have decided to refuse to issue the permit.
- (3) The ACMA may, by written instrument, determine that subclause (2) has effect, in relation to a specified application for a facility installation permit, as if a reference in that subclause to 65 business days were a reference to such greater number of business days, not exceeding 85 business days, as is specified in the determination. The determination has effect accordingly.
- (4) In determining the validity of any action taken by the ACMA under Part 25 in relation to the holding of a public inquiry in relation to in a permit, regard must be had to the ACMA's need to act with sufficient speed to meet the time limit imposed by subclause (2).

27 Criteria for issue of facility installation permit

Criteria

- (1) The ACMA must not issue a facility installation permit that authorises a carrier to carry out the installation of one or more facilities unless the ACMA is satisfied that:
 - (a) the telecommunications network to which the facilities relate is, or is likely to be, of national significance; and

- (b) the facilities are, or are likely to be, an important part of the telecommunications network to which the facilities relate; and
- (c) any of the following conditions is satisfied:
 - (i) the greater part of the infrastructure of the telecommunications network to which the facilities relate has already been installed;
 - (ii) the greater part of the infrastructure of the telecommunications network to which the facilities relate has not been installed but each administrative authority whose approval was required or would, apart from Division 3, be required, for the installation of the greater part of the infrastructure of the network has given, or is reasonably likely to give, such approval;
 - (iii) no part of the infrastructure of the telecommunications network to which the facilities relate has been installed, but each administrative authority whose approval was required or would, apart from Division 3, be required, for the installation of the greater part of the infrastructure of the network has given, or is reasonably likely to give, such an approval; and
- (d) the advantages that are likely to be derived from the operation of the facilities in the context of the telecommunications network to which the facilities relate outweigh any form of degradation of the environment that is likely to result from the installation of the facilities; and
- (e) in a case where none of the facilities consists of a designated overhead line—the conditions set out in subclause (2) are satisfied; and
- (f) in a case where any of the facilities consists of a designated overhead line—all the conditions set out in subclause (2A) are satisfied; and
- (g) where the facility is proposed to be located near a community sensitive site, including residential areas, childcare centres, schools, aged care centres, hospitals, playgrounds and regional icons:
 - (i) the community has been fully consulted, and wherever possible, has agreed to the facility; and
 - (ii) alternative less sensitive sites have been considered; and
 - (iv) efforts have been made to minimise electromagnetic radiation exposure to the public.

Conditions relating to facilities other than designated overhead lines

- (2) For the purposes of paragraph (1)(e), the following conditions are specified:
 - (a) the carrier has made reasonable efforts to negotiate in good faith with:
 - (i) each proprietor whose approval is required, or would, apart from Division 3, be required, for carrying out the installation; and
 - (ii) each administrative authority whose approval is required, or would, apart from Division 3, be required, for carrying out the installation; and

- (b) one of the following subparagraphs applies:
 - (i) at least one approval that is referred to in subparagraph (a)(i) has not been obtained within 20 business days after the beginning of the negotiations concerned;
 - (ii) at least one approval that is referred to in subparagraph (a)(ii) has not been obtained within 6 months after the beginning of the negotiations concerned;
 - (iii) at least one approval that is referred to in paragraph (a) has been refused.

Conditions relating to facilities consisting of designated overhead lines

(2A) For the purposes of paragraph (1)(f), the following conditions are specified:

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

Networks of national significance

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

When facilities are an important part of a network

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

When advantages of facilities outweigh degradation of the environment

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

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

Long-term interests of end-users

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

Environmental impact

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

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

Deemed approvals by administrative authorities

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

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

Definitions

- (9) In this clause:

administrative authority means:

- (a) the holder of an office; or
- (b) an authority of a State or a Territory; or

(c) a local government body;
performing administrative functions under a law of a State or a Territory.

approval means an approval or permission (however described).

negotiations includes:

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

proprietor means an owner or occupier of land.

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

telecommunications network includes a proposed telecommunications network.

28 Special provisions relating to environmental matters

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

this Division includes:

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

29 Consultation with the ACCC

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

30 Facility installation permit has effect subject to this Act

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

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

31 Duration of facility installation permit

- (1) A facility installation permit comes into force when it is issued and remains in force until the end of the period specified in the permit.

- (2) However, the ACMA may, by written notice given to the holder of a facility installation permit, extend the period specified in the permit if the ACMA is satisfied that the extension is warranted because of special circumstances.

32 Conditions of facility installation permit

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

33 Surrender of facility installation permit

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

34 Cancellation of facility installation permit

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

35 Review of decisions by Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the ACMA under clause 25 or 26 to refuse to issue a facility installation permit if the ACMA has not held a public inquiry in relation to the permit.
- (2) If the ACMA:
 - (a) makes a decision of a kind covered by subclause (1); and
 - (b) gives to the person or persons whose interests are affected by the decision written notice of the making of the decision;

that notice is to include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.

(3) A failure to comply with subclause (2) does not affect the validity of a decision.

(4) In this clause:

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