

# Guide to applying for a permit to install a submarine cable in Australian waters (other than in a protection zone or coastal waters)

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# Introduction

This guide is intended to assist carriers in **applying for a permit to install a submarine cable in Australian waters (other than in a protection zone or coastal waters)** under clause 64 of Schedule 3A to the *Telecommunications Act 1997* (the Act). These permits are referred to as 'non-PZ permits' (that is, 'non protection zone permits') throughout this guide.

The guide outlines the legislative requirements governing the process of applying for non-PZ permits and the Australian Communications and Media Authority's (ACMA's) policies for administering this process.

This guide is not a substitute for the Act and is intended to be read in conjunction with Schedule 3A to the Act. Expressions used in the guide are intended to have the same meaning as in the Act.

Potential applicants may contact the ACMA for information about the permit process for installing submarine cables. However, this information is provided without prejudice to a subsequent decision by the ACMA, and the ACMA reserves the right to exercise its powers under the Act to refuse an application or impose conditions on a permit to install a submarine cable.

In making decisions related to matters covered in this guide, the ACMA will take all relevant factors into account and decide each application on its merits. Potential applicants are advised to seek their own independent legal advice when preparing a permit application. This guide is produced in good faith and is not intended to be a substitute for independent legal advice.

An **application form** for a permit to install a submarine cable in Australian waters (other than in a protection zone or coastal waters) is available on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au). Schedule 3A to the *Telecommunications Act 1997* and the associated Explanatory Memorandum can also be downloaded from the ACMA website.

## 2. Permits to install submarine cables in Australian waters (other than in a protection zone or coastal waters)

### 2.1 General information

A carrier may apply to the ACMA for a permit to install one or more submarine cables in Australian waters that are not in a protection zone (PZ) and that are not coastal waters off a state or the Northern Territory. For the purposes of this guide, these permits are referred to as 'non-PZ permits'.

This section provides guidance to the general requirements of non-PZ permit applications, including (i) the recommended process for carriers making an application, (ii) applicable charges and (iii) procedures for processing non-PZ permit applications.

#### Terminology

The guide refers to the following terms, which are explained below.

**'Non-PZ permits'** refer to permits for carriers to install submarine cables in Australian waters outside a protection zone and outside coastal waters (which are within the jurisdiction of states and territories).

**'Carrier'** is defined in the *Telecommunications Act 1997* as 'the holder of a carrier licence'.

**'Coastal waters'** is defined in Schedule 3A of the Act to mean the waters covered by the *Coastal Waters (State Powers) Act 1980* (Cth) or the *Coastal Waters (Northern Territory Powers) Act 1980* (Cth). Coastal waters are generally the first three nautical miles of the territorial sea adjacent to each state and the Northern Territory, plus (in the case of Western Australia) some title areas landward of the territorial sea baseline but external to the state.

**'Australian waters'** is defined in Schedule 3A of the Act to mean:

- > the waters of the territorial sea (within the meaning of the *Seas and Submerged Lands Act 1973*) of Australia
- > the waters of the exclusive economic zone of Australia
- > the sea above that part of the continental shelf of Australia that is beyond the limits of the exclusive economic zone.

For other definitions relating to the submarine cable regime, carriers are advised to refer to subclause 2 (1) of Schedule 3A of the Act.

#### Important note

Carriers wishing to install submarine cables within coastal waters outside a protection zone **will be required to comply with any applicable state and territory laws.**

### **The ACMA may impose conditions**

If an application is granted, the ACMA may make the non-PZ permit subject to specified conditions that relate to the installation of the cable or cables. Conditions may vary across different locations within the non-PZ permit area. Conditions can be varied by the ACMA at any time, and remain in force until modified or revoked by the ACMA.

### **Duration of a non-PZ permit**

A non-PZ permit will remain in force for **18 months**. The 18-month period of the permit commences on the day it is granted.

A carrier may seek an extension of a permit of a further 180 days under clause 76 of Schedule 3A of the Act. The carrier seeking the extension must give the ACMA reasons in writing for seeking the extension **before** the non-PZ installation permit expires. There is no statutory limit to the number of extensions that may be granted, but a fee of \$595.00 (GST exempt) will be payable in each case.

## **2.2 Recommended process for carriers**

### **When to apply to the ACMA for a permit**

The ACMA strongly recommends that applicants obtain all relevant approvals **before** applying to the ACMA for a non-PZ permit, including:

- > any permits or approvals required by the Department of Environment and Heritage. Applicants should be aware that requirements of the *Environment Protection and Biodiversity Conservation Act 1999* will apply
- > any state and territory approvals within coastal waters up to three nautical miles from shore.

### **Checklist for carriers**

Before applying to the ACMA for a non-PZ permit, it is recommended that applicant carriers:

- > apply for and obtain an Australian carrier licence
- > apply for and obtain all relevant state/territory approvals required for the installation
- > apply for and obtain all permits or approvals required under the *Environment Protection and Biodiversity Conservation Act 1999*
- > complete a desktop or hydrographic survey outlining proposed route of the cable installation.

### **Submitting an application to the ACMA**

An application for a permit to install a submarine cable must be in writing and in the form approved by the ACMA.

Applicants must also provide a submission addressing the criteria set out in clauses 71 and 72 of Schedule 3A to the Act to assist consideration and assessment of the application (Part A of the application). Guidelines on preparing a submission are provided at Section 4 of this guide (see also Figure 1).

**Note:** The ACMA strongly recommends that carriers approach the Department of Environment and Heritage **before** applying to the ACMA for a non-PZ permit. Requirements of the *Environment Protection and Biodiversity Conservation Act 1999* will continue to apply. Carriers should also obtain relevant permits and approvals from applicable state and territory bodies before applying to the ACMA for a non-PZ permit.

## 2.3 Applicable charges for non-PZ permits

### Application fee and expert consultancy charge

An application for a non-PZ permit must be accompanied by the payment of the appropriate fee and consultancy charge either by cheque payable to the Collector of Public Moneys, Australian Communications and Media Authority or direct deposit to the ACMA.

For payment by direct deposit, contact the ACMA's Finance Section via email at [zfinance@acma.gov.au](mailto:zfinance@acma.gov.au) or phone 02 6219 5521 **prior to lodging the application** to arrange for a tax invoice to be sent to you. Payments can then be made by EFT, BPay Locked Bag or credit card by following the instructions on the tax invoice.

The relevant fees and consultancy charge are:

- > an application fee of \$8,176.00 (GST exempt), or \$7,388.00 (GST exempt) where the application is linked to a protection zone permit
- > an expert consultancy charge of \$25,000.00 (GST exempt).

The fee relates to the expenses arising from the ACMA's administration of the application, and the amount is based on cost recovery. Where a non-PZ permit is linked to a PZ permit application, a reduced application fee applies reflecting the slightly lower administrative expenses involved when processing linked applications.

The expert consultancy charge is to cover the cost of any required expert consultant assessment. Any unspent portion of the charge may be refundable, and the charge will only be used if a situation arises where the ACMA considers independent expert advice is needed. A further charge may be levied if the costs of an expert consultant exceed the expert consultancy charge. The ACMA may utilise consultants to verify claims made by applicants in relation to a proposed installation. For example, specialist consultants may provide current technical information about the operation of a proposed cable where there are issues relating to the impact of the proposed installation on the environment.

### Extension of permit fee

As mentioned, a carrier seeking the extension of a non-PZ permit must give the ACMA reasons in writing for seeking the extension **before** the non-PZ permit expires. There is no limit to the number of extensions that may be granted, but **a fee of \$595.00** (GST exempt) will be payable in each case.

## 2.4 Processing non-PZ permit applications

### Confirmation of receipt

The ACMA will acknowledge in writing receipt of an application for a permit to install a submarine cable in Australian waters. The acknowledgement will nominate an ACMA contact officer for enquiries about progress of the application. Applications that do not meet the statutory requirements or are incomplete or illegible will be returned to the applicant with an explanatory letter.

### Requests for additional information

After receiving an application for a permit to install a submarine cable, the ACMA will decide to:

- > either proceed to consideration of the application
- > or request additional information from the applicant.

To assist in consideration of an application for a non-PZ permit, the ACMA may seek clarification or additional information from an applicant about their application. The ACMA will give applicants a reasonable period in which to provide the requested information. Where information is not readily available, the ACMA will consider extending the period.

#### **Matters to be considered by the ACMA**

Clause 71 to Schedule 3A of the Act requires the ACMA to refer to a range of matters relating to the facilitation of carriage services, co-location of cables, the environment and heritage, technical, economic, social, and other matters that the ACMA considers relevant. Applicants are requested to provide a response to each criterion at Part B of their application.

#### **Treatment of information**

The ACMA must consult with the Environment Secretary (and other persons the ACMA considers relevant) and consider a range of concerns before making a decision regarding a permit. To meet this statutory responsibility, relevant parts of a pending application may be forwarded and/or discussed with other entities. This is specified in the application form.

If the ACMA is of the view that information received is commercial-in-confidence, it will be treated as confidential and not disclosed unless the ACMA is legally required to do so. If there is a legal requirement for the ACMA to disclose commercial-in-confidence information, the ACMA will endeavour to inform that body or person to which the information is disclosed (for example, a specialist consultant) of its confidential nature and endeavour to make arrangements for its proper use and protection.

Where an applicant is of the view that specific information supplied against a criterion is commercial-in-confidence and is not to be disclosed to any entity/person outside the ACMA, this should be indicated clearly. The ACMA will then liaise with the applicant about its use if disclosure is required to meet the ACMA's statutory responsibilities.

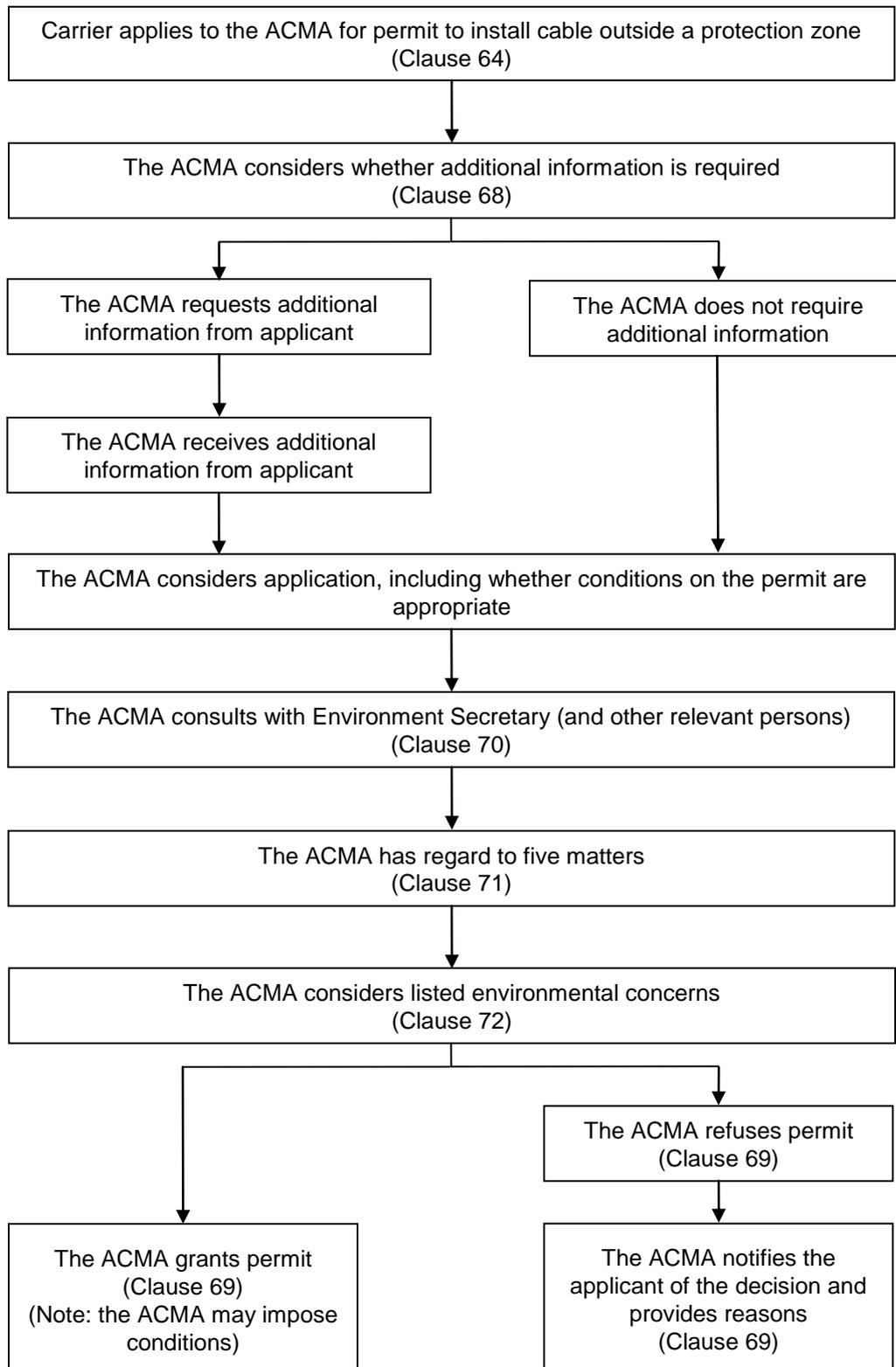
#### **Timeframes for processing an application**

If the ACMA proceeds with consideration of an application for a permit to install a submarine cable in Australian waters, it is required to grant or refuse the non-protection zone installation permit **within 180 days** after the day the application for the permit was received.

The ACMA may extend this initial 180-day period by not more than 90 days. An extension of time will be accompanied by a written notice from the ACMA to the applicant notifying them why the ACMA has been unable to make a decision within the initial or previously extended time period.

**Note:** If the ACMA has requested additional information (clause 68 of Schedule 3A) the 'clock stops' on the application processing timeframe until the requested information has been received.

Figure 1 Application process for a non-PZ permit



# 3. Decision to issue or refuse a non-PZ permit

## 3.1 Decision-making factors the ACMA must consider

### Objective of the new permit regime

The basic objective of the new permit regime is to regulate the installation of submarine cables in a way that appropriately balances the economic benefits of proposed cables with all associated costs, including adverse environmental impacts.

To make a decision about a non-PZ permit, the ACMA must consider all relevant factors relating to the installation.

Under Schedule 3A of the Act, the ACMA must not grant a non-PZ permit unless it has:

- > consulted with the Environment Secretary
- > consulted with any other persons the ACMA considers relevant (clause 70)
- > considered five specific matters (clause 71). The detail of these clauses is provided at Appendix A.

The ACMA can determine the weight it will give to the individual matters to which it must consider and will take all relevant factors into account and assess each application on its merits.

### How will the ACMA consider matters listed?

The ACMA will consider all applications on a case-by-case basis. In making a decision about an application, the ACMA will rely on information submitted by the applicant, but may seek other inputs (for example, from other government agencies) if considered necessary.

Applicants should note that the factors listed in clauses 70 and 71 of the Act are not strict requirements or pre-requisites, but are matters to which the ACMA **must consider** when deciding whether or not to grant a non-PZ permit. For example, if, in the course of considering an application, it becomes obvious to the ACMA that the installation of the proposed cable could in some way have an adverse effect upon cetaceans (clause 72 (a)(v)), the ACMA is not obliged or required to refuse the application, but it must consider this as a factor when weighing up whether or not to grant the non-PZ permit.

As a matter of procedural fairness, any comments provided by other bodies (for example, the Environment Secretary) that, in the ACMA's opinion, weigh against the granting of an application and which the ACMA proposes to take into account in making its decision, would be put to the applicant for comment before a decision is made.

## 3.2 The ACMA's general principles for decision-making

The ACMA's decision to issue a non-PZ permit is an administrative one. When making decisions of an administrative character, the ACMA must comply with the requirements imposed upon it by law. This includes common law and statutory requirements.

In this guide, decision-makers are either referred to as ‘the ACMA’, encompassing the Chair and Board Members, or ‘ACMA officers’, being officers to whom powers have been delegated under the various Acts and subordinate legislation administered by the ACMA, including the *Australian Communications and Media Authority Act 1997*, the *Radiocommunications Act 1992* and the *Telecommunications Act 1997* (the Acts).

There are a number of general legal principles that apply to making decisions of an administrative character by ACMA officers, including the following:

- 1) the decision must be within a power properly conferred under the Acts upon the decision-maker
- 2) a decision-maker must consider all matters that are relevant to the making of the decision and not take into account matters that are not relevant to the making of the decision
- 3) a decision-maker must not make a decision or exercise a power or discretion in bad faith or for an improper purpose
- 4) a decision-maker must ensure that findings of fact are based on evidence
- 5) decisions must be reasonable
- 6) those who may be affected by a decision must be accorded procedural fairness, which includes the principles of natural justice
- 7) a decision-maker must properly consider the application of government policy
- 8) a decision-maker must not exercise a discretionary power at the direction of another person.

### **3.3 Review rights**

A decision by the ACMA to refuse or grant a non-PZ permit is subject to internal reconsideration by the ACMA and review by the Administrative Appeals Tribunal in accordance with clause 1 of Schedule 4 of the Act.

## 4. Preparing an application for a non-PZ permit

The ACMA has prepared broad guidelines to assist applicants to prepare an application for a non-PZ permit. This section provides general guidance about the information requested by the ACMA. Applicants are also encouraged to provide any additional information considered relevant to the ACMA's assessment of an application.

**Note:** The granting of a non-PZ permit applies to installations within Australian waters only. Any requirements pertaining to state or territory waters need to be taken up separately with the relevant bodies.

### 4.1 Part A—applicant details

Under the Act, **only carriers may apply** to the ACMA for a permit (clause 64 of Schedule 3A).

A carrier is defined as 'the holder of a carrier licence' under the Act. Applicants are requested to provide details and specify the date the carrier licence was granted.

The ACMA has responsibility for administering the carrier licensing regime. For information about carrier licensing, contact the ACMA at [subcablesenquiries@acma.gov.au](mailto:subcablesenquiries@acma.gov.au). A list of carrier licences issued by the ACMA is located on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

The form also requests that applicants stipulate whether the applicant carrier is to be the sole owner or operator, joint owner or operator, installing the cable on behalf of another person, or other. Applicants are not required to submit detailed information, but simply indicate which other party or parties will be involved in the proposed installation.

### 4.2 Part B—proposed installation information

This section of the application form requires carriers to give detailed information (including maps where appropriate) about the proposed installation of the cable or cables under the following criteria. This should be clearly labelled Part A on an application.

#### **Question 1: What is the nominal location of the proposed submarine cable?**

Carriers are requested to provide information specifying:

- > geographic co-ordinates and geodetic datum of the proposed installation
- > point at which installation will land onshore.

Carriers are requested to submit a copy of a desktop or hydrographic survey of the proposed route to illustrate the exact location of the proposed installation.

Carriers are also requested to provide brief information about how the proposed installation will interconnect with communications facilities onshore.

## **Question 2: What is the date of the proposed installation of the cable?**

Under this question, carriers are requested to indicate (as accurately as possible) proposed installation dates of the cable. It would be useful for carriers to attach a brief explanation of the anticipated:

- > commencement date of the proposed installation
- > duration of the actual installation process
- > completion date for installation.

In the event that the proposed installation date appears likely to change during consideration of a pending application, the applicant must notify the ACMA immediately.

This information will assist the ACMA in determining whether or not permit conditions are appropriate. For example, the ACMA may place a condition on a permit that installation must **not** occur during a particular month(s) because of the anticipated migration of a particular species in the area.

## **Question 3: How does the proposed installation further the supply of efficient, modern and cost-effective carriage services to the public?**

Applicants are requested to provide information about whether the proposed installation will:

- > benefit (for example, by providing lower cost services) Australian end-users (or, a company or other entity)
- > advance the delivery of reliable services to Australian end-users (or, a company or other entity)
- > facilitate competition.

Carriers are advised to provide a **brief** description (no more than 300 words) of the capacity of the proposed installation and how any features of the new installation might advance the delivery of Australian telecommunications services.

## **Question 4: Are there any identified listed international agreements (as defined in clause 2 of Schedule 3A of the *Telecommunications Act 1997*) that may apply to, or affect the installation, maintenance, or operation of, the proposed cable?**

Under Schedule 3A to the Act, a listed international agreement constitutes any of the following:

- > an agreement that is a listed international agreement for the purposes of Schedule 3
- > an international agreement specified in regulations made for the purposes of this definition.

An applicant is requested to (briefly) indicate that it has checked whether any listed international agreements (as defined in clause 2) apply to the proposed installation, and if so, if there is any foreseeable impact of the installation on such an agreement(s).

During the course of a pending application the ACMA is likely to conduct its own enquiries regarding listed international agreements.

Carriers should also note that clause 82 of Schedule 3A requires carriers to ensure that the installation of a submarine cable is done in a manner that is consistent with Australia's obligations under a listed international agreement that is relevant to the installation.

**Question 5: Has the applicant sought and/or received approvals under the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the proposed installation? If not, please state reasons.**

The *Environment Protection and Biodiversity Conservation Act 1999* is administered by the Department of Environment and Heritage, and operates to protect the environment, particularly matters of national environmental significance.

Approval may be required under the *Environment Protection and Biodiversity Conservation Act 1999* for certain activities in Australian waters. For more information, contact the Department of Environment and Heritage (for contact details, see the Department's [website](#)).

Schedule 3A of the *Telecommunications Act 1997* and the *Environment Protection and Biodiversity Conservation Act 1999* operate concurrently and independently of each other. Carriers may wish to seek their own legal advice in relation to their obligations under the *Environment Protection and Biodiversity Conservation Act 1999*.

It is recommended that applicants provide brief statements demonstrating that:

- > the carrier has approached the Department of Environment and Heritage about the proposed installation (with approximate dates)
- > an approval was or was not required under the *Environment Protection and Biodiversity Conservation Act 1999*
- > the date at which the approval (or permit) was granted by the Department of Environment and Heritage.

If approval has not yet been sought and/or granted, carriers are requested to provide (brief) reasons why.

As indicated, it is recommended carriers obtain relevant approvals **before** applying to the ACMA for a non-PZ permit.

**Question 6: Please indicate whether the installation, maintenance or operation of the submarine cable could have an adverse effect on:**

- I. a listed threatened species or threatened ecological community, or impede the recovery of a listed threatened species or ecological community
- II. a listed marine species
- III. the environment, including the environment within a Commonwealth marine area
- IV. cetaceans
- V. a listed migratory species
- VI. the National Heritage values of a place included in the National Heritage List
- VII. the ecological character of a declared Ramsar wetland
- VIII. the world heritage values of a declared World Heritage property
- IX. a place that Australia is required to protect by the terms of a listed international agreement

- X. an area that, under the law of the Commonwealth, a state or a territory, is reserved wholly or principally for marine conservation purposes (however described)
- XI. an area that under a law of the Commonwealth, state or territory, is protected from significant environmental disturbance.

### **What is 'adverse effect'?**

There is no definition of what constitutes 'adverse effect' in Schedule 3A to the Act. By way of guidance, the ACMA intends to base its consideration on whether the proposed installation:

- > is reasonably likely to have an adverse effect or impact (generally meaning a detrimental effect) on the environment
- > (if yes) can any action be taken to minimise such an impact?

If the ACMA arrives at the view that the proposed installation is likely to have a detrimental effect on the environment, then it is a matter for the ACMA to determine what weight should be attributed to this, and consider the environmental costs versus the overall benefits of the installation.

Again, applicants should note that the practical effect of must consider is not that the ACMA must reject a proposed installation on the grounds that it does not meet the factors listed.

**Note:** Requirements under the *Environment Protection and Biodiversity Conservation Act 1999* differ in scope and assessment from those matters the ACMA must consider under Schedule 3A. Applicants should familiarise themselves with both sets of legislative requirements.

### **Responding to individual elements of question 6**

Applicants are requested to present their responses against each subsection with supporting material (note: a simple 'no' response will not be sufficient). This may include:

- > research or studies undertaken by the applicant
- > a consultancy engaged by the applicant
- > findings provided by other government agencies (for example, the Department of Environment and Heritage) about other legislative requirements
- > recognised independent analysis, such as published government reports.

In some cases, it may assist applicants to respond to an individual matter by considering some more general impacts of the proposed installation. For example, when considering subsection vi of clause 72: *whether the installation, maintenance or operation of the proposed cable may have an adverse effect on the environment, including the environment within a Commonwealth marine area*, applicants may wish to provide information about:

- > the marine ecosystems or sensitive environments through which the cable will pass
- > whether the proposed installation has the potential to modify, destroy, isolate or disturb an area of habitat or population of a marine ecosystem
- > whether the proposed installation has the potential to release persistent organic chemicals, heavy metals or potentially harmful chemicals accumulating in the marine environment that affect biodiversity, ecological integrity, social amenity or human health
- > whether the proposed installation has the potential to adversely affect the heritage values of a Commonwealth marine area, such as the damage or destruction of an historical shipwreck.

**Question 7: Is the proposed installation to be installed at or near an area or thing that is of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions?**

It is suggested that applicants provide brief statements indicating:

- > the extent to which any native title rights as recognised by the *Native Title Act 1993* are affected by the proposed installation
- > whether the proposed cable route is within or in close proximity to an area or thing that is of particular significance to Aboriginal persons or Torres Strait Islanders
- > (if yes) a brief description of when these areas were established to be of such significance to Aboriginal persons or Torres Strait Islanders.

As part of its consideration of a non-PZ permit application, the ACMA may seek separate comments from native title representative bodies as ‘relevant persons to consult’ (clause 70 [b]).

**Question 8: Please provide relevant technical and economic aspects in relation to the proposed submarine cable.**

Applicants are requested to provide information addressing the following technical aspects of the proposed installation:

- > design capacity of proposed installation
- > proposed depth and burial of installation, including the proposed width of any trench surrounding the installation(s)
- > any additional measures designed to minimise future damage to the cable
- > compliance with international best practice recommendations—through reference to relevant International Cable Protection Committee (ICPC) recommendations
- > does the proposed installation cross existing cables or pipelines?
- > whether any types of alternative technical features or installation methods exist have been examined that would minimise any identified effects of the proposed installation on the environment?

Economic aspects of the proposed installation:

- > identification of the party or parties responsible for the **installation** of the proposed cable
- > name of party or parties responsible for the **maintenance and repair** of the proposed installation.

**Question 9: Does the proposed installation involve co-location with another submarine cable or cables?**

Carriers are requested to provide information about the **proximity** of the proposed installation to other existing submarine cable(s).

There is no definition of ‘co-location’ in Schedule 3A of the Act. The ACMA will therefore consider the **area or distance** of a proposed installation from other existing cables.

The new regime encourages installation of future cables in areas declared as protection zones to minimise the impact of cables on the environment, sea and seabed. Carriers should note that the Explanatory Memorandum to Schedule 3A of the Act indicates that an application to install a cable outside a protection zone and outside coastal waters may not be approved if co-location of the cable with another

cable in an existing protection zone is feasible (see page 89 of the Explanatory Memorandum).

If co-location with another cable is not proposed (notwithstanding that protection zones are yet to be declared), applicants are requested to specify the (brief) reasons why. These may include technical, economic, or other reasons. For example, the ACMA is aware that ICPC includes the recommendation that parallel cables be ideally located apart at a distance of two or more times the depth of water (subject to 'choke points' or narrow areas through which two or more cables are likely to pass).

The ACMA will consider the issue of co-location on a case-by-case basis, and will examine and ultimately weigh-up an applicant's reasons why a new installation is not proposed to be 'co-located' with another cable or cables.

**Question 10: Are there agreements in place between or with other sea/seabed users (such as a memorandum of understanding) in relation to the proposed location of the cable(s)?**

Applicants are requested to provide brief information demonstrating whether there is an agreement in place between a cable owner and other sea or seabed users about the proposed installation. Such agreements could include a memorandum of understanding with local fishers, or an agreement to follow the terms of an international code when cables cross oil and gas pipelines.

Responses to this question can be brief, and simply indicate:

- > if there is an agreement in place
- > identification of the party with whom the applicant has such an agreement
- > broad parameters of the agreement (that is, what the agreement entails)
- > location of the area of Australian waters to which the agreement applies.

If the applicant considers that such information is sensitive, this should be marked clearly on the application. As indicated, the ACMA will endeavour to protect confidential information.

**Question 11: Has the applicant sought and/or received permits or approvals from relevant state or territory bodies in relation to the proposed installation?**

The installation of a submarine cable outside a protection zone does **not** exempt a carrier from any state and territory laws. Within coastal waters up to three nautical miles from shore that are outside a protection zone, **carriers will still be required to comply with state and territory laws** applicable to the installation of submarine cables.

The nature of state legislative requirements may vary significantly between states and the Northern Territory, and applicants may wish to seek independent legal advice about their obligations.

The ACMA may seek to consult informally with an identified state or territory body or bodies as to relevant persons to consult regarding a proposed installation (see clause 70 (b) of Schedule 3A).

Applicants are requested to briefly outline:

- > what state or territory approvals/permits are applicable to the proposed installation
- > what state or territory departments or bodies the applicant has consulted about the approvals or permits required
- > the status of any permits or approvals required

- > whether any restrictions or conditions on the proposed installation have been placed on the applicant by a state or territory body.

**Note:** Applicants are strongly advised to contact relevant state or territory agencies about permits and approvals that may be required **before** applying to the ACMA for a non-PZ permit.

**Question 12: Are there any other matters relevant to the ACMA’s consideration of the proposed installation?**

Applicants are requested to submit any additional information in support of an application that may be relevant to the ACMA’s consideration of a proposed installation.

### **4.3 Part C—conditions applicable to the installation of submarine cables**

The form asks applicants to acknowledge that they have read and understood the conditions applicable to the installation of submarine cables. It does **not** require applicants to demonstrate how they seek to fulfil these legislative obligations.

The conditions listed are specified in clauses 79–83 (inclusive) of Schedule 3A to the Act. Breaching permit conditions may result in suspension or cancellation of a permit (clause 77 of Schedule 3A) and/or the imposition of a fine (clause 85 of Schedule 3A).

These conditions apply to the installation of a submarine cable in **Australian waters** (other than coastal waters of a state or the Northern Territory). In addition to these requirements, installations in **coastal waters (outside protection zones) will come under the jurisdiction of relevant state and territory planning authorities**, and it is not proposed to apply the conditions specified in clauses 79–83 (inclusive) of Schedule 3A of the Act in such waters. Carriers may wish to seek their own legal advice concerning their obligations.

Carriers should also note that:

- > The installation of telecommunications facilities on land may be subject to the requirements detailed in Schedule 3 of the Act.
- > The ACMA may require, as a general condition on non-PZ permits, that carriers confirm the date and method of installation with the ACMA (once occurred) to ensure that any conditions on the non-PZ permit—as granted by the ACMA—are met.

**Note:** The ACMA may also grant a non-PZ permit subject to specified conditions that relate to the installation of the cable. Conditions may vary across different locations within the non-PZ permit area. Conditions can be varied by the ACMA at any time, and remain in force until modified or revoked by the ACMA.

### **4.4 Part D—carrier declaration**

Applicants are requested to assert that the information contained in the application form is true and correct, and sign accordingly. Penalties apply for making false and misleading statements in connection with an application for a non-PZ permit.

## 5. Suspension or cancellation of a permit

The ACMA may suspend or cancel a non-PZ permit by giving notice to the holder of the permit (clause 77 of Schedule 3A).

### **Process for suspension or cancellation**

To suspend or cancel a non-PZ permit, the ACMA must be satisfied that the carrier holding the permit has breached a condition of the permit or has not complied with any conditions in the *Telecommunications Code of Practice 1997* applying to the installation of submarine cables. Carriers are advised to refer to clause 77 of Schedule 3A of the Act.

The ACMA is required to give the holder of the permit written notice of its intention to suspend or cancel a permit 30 days before it does so. The grounds on which the suspension or cancellation is based must be provided in the notice.

The ACMA must give the permit holder the opportunity to submit to the ACMA any matters for consideration and must take into account matters submitted and any remedial action taken before deciding whether to cancel or suspend.

**Note:** Installing a submarine cable without a permit is an offence under the *Telecommunications Act 1997*.

### **Review rights**

If, following the ACMA consultation with the permit holder, the ACMA decides to suspend or cancel a permit, the ACMA's decision will be able to be reviewed by the Administrative Appeals Tribunal, following a process of internal reconsideration by the ACMA (see Part 29 and clause 1 of Schedule 3 to the Act).

## 6. More information

For further advice about permits for the installation of submarine cables in Australian waters (outside a protection zone or coastal waters), contact the ACMA's Submarine Cable Project Section. Correspondence should be addressed to:

The Manager  
Submarine Cable Protection  
Australian Communications and Media Authority  
PO Box 13112 Law Courts  
Melbourne VIC 8010

Telephone: (03) 9963 6800

Facsimile: (03) 9963 6979

Email: [subcablesenquiries@acma.gov.au](mailto:subcablesenquiries@acma.gov.au)

Website: [www.acma.gov.au](http://www.acma.gov.au)

# Appendix A

## **Extract from the *Telecommunications and other Legislation Amendment (Protection of Submarine Cables and Other measures) Act 2005***

### **Clause 70 Consultation before the ACMA makes a decision about a permit**

The ACMA must not grant a non-protection zone installation permit unless it has consulted with:

- (a) the Environment Secretary; and
- (b) any other persons the ACMA considers relevant,

in relation to the application for the permit.

### **Clause 71 Matters the ACMA must have regard to before it makes a decision about a permit**

In deciding whether to grant a non-protection zone installation permit, the ACMA must have regard to:

- (a) the objective of facilitating the supply of efficient, modern and cost-effective carriage services to the public; and
- (b) the impact of the installation on the environment; and
- (c) any relevant technical and economic aspects of the installation; and,
- (d) whether the installation involves co-location of the submarine cable or cables to which the application relates with one or more other submarine cables; and,
- (e) any other matters that ACMA considers relevant.

### **Clause 72 Environment and Heritage considerations**

For the purposes of paragraph 71(b), the ACMA must have regard to:

- a) whether the installation, maintenance or operation of the submarine cable:
  - (i) is inconsistent with Australia's obligations under a listed international agreement;
  - (ii) could have an adverse effect on a listed threatened species or a threatened ecological community, or impede the recovery of a listed threatened species or threatened ecological community; or
  - (iii) could have an adverse effect on a listed marine species; or
  - (iv) could have an adverse effect on the environment, including the environment within a Commonwealth marine area; or
  - (v) could have an adverse effect on cetaceans; or
  - (vi) could have an adverse effect on a listed migratory species; or
  - (vii) could have an adverse effect on the National Heritage values of a place included in the National Heritage List; or
  - (viii) could have an adverse effect on the ecological character of a declared Ramsar wetland; or
  - (ix) could have an adverse effect on the world heritage values of a declared World Heritage property; or

- (x) could have an adverse effect on a place that Australia is required to protect by the terms of a listed international agreement; or
  - (xi) could have an adverse effect an area that, under law of the Commonwealth, a state or a territory, is reserved wholly or principally for marine conservation purposes (however described); or
  - (xii) could have an adverse effect on an area that, under a law of the Commonwealth, a state or a territory, is protected from significant environmental disturbance; and
- b) whether the submarine cable is to be installed at or near an area or thing that is of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions; and
  - c) such other matters (if any) as the ACMA considers relevant.