

TELECOMMUNICATIONS LAWS OF THE WORLD

Australia



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AUSTRALIA



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OVERVIEW OF LEGAL LANDSCAPE

The Australian telecommunications regulatory landscape and regulatory perimeter is broad and complex.

The primary telecommunications legislation, the 1997 Telecommunications Act, removed barriers to participation and added to earlier legislation which was intended to permit facilities-based competition. The 1997 Telecommunications Act implemented an access regime applicable only to the telecommunications industry and also provided prohibitions against anti-competitive conduct.

The telecoms industry is heavily-regulated and has seen additional complexity arising through a governmental decision to support the construction of a National Broadband Network (NBN) and the incorporation of a wholesale only company to supply broadband services (NBN Co). This has resulted in significant regulatory changes (in particular, to shield NBN Co from certain types of competition). The current government has announced changes to the NBN, in particular potentially removing cross-subsidies between urban and rural areas which were intended to provide for a single, Australia-wide access price, as well as adjustments to its facility-based competition principle (which saw other operators connect fiber-to-the-building (FTTB) infrastructure to high-density, higher use buildings such as apartment blocks).

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

As noted above, the Telecommunications Act 1997 is the key legislation which regulates, amongst other things, telecommunications carriers in Australia.

It is supported by a range of other legislation, instruments and codes including the [Telecommunications \(Consumer Protection and Service Standards\) Act 1999](#), which provides for the establishment of the universal service obligation with respect to standard telephone services in Australia, the ability of the Australian Communications and Media Authority (ACMA) to set performance standards and obligations on carriers, and the requirement for carriage service providers to enter the Telecommunications Industry Ombudsman scheme. ACMA has also recently published codes regarding:

- **emergencies:** The C536:2020 Emergency Call Services Requirements Industry Code (Updated 17 December 2020) requires carriers and carriage service providers to ensure access to emergency call services. Carriers are also required under the Telecommunications Act 1997 to provide help as is reasonably necessary, in the event of a National Emergency Declaration or state of disaster or emergency; and
- **scams:** Industry Code C661:2022 Reducing Scam Calls and Scam SMS (Updated 12 July 2022) provides for processes for carriers and carriage service providers to disrupt scam calls and SMS. This includes provision for processes that enable carriers to exchange information in relation to spam materials, to facilitate the reduction of spam in telecommunications.

Specific NBN Co Laws, Regulations and Policies

The regulatory framework for the NBN was established through the [National Broadband Network Companies Act 2011](#) and the [Telecommunications Legislation Amendment \(National Broadband Network Measures - Access Arrangements\) Act 2011](#) which added to the existing generic telecommunications regulatory framework. In addition:

- **Nondiscrimination obligations:** The Australian Competition and Consumer Commission (ACCC) must publish guidance on NBN Co's non-discrimination obligations.
- **ACCC explanatory material on the Part XIC nondiscrimination provisions:** Under the legislation, NBN Co can choose to publish a standard form of access agreement and/or give a special access undertaking to the ACCC in relation to its terms and conditions for the supply of wholesale services. Where an access agreement differs from the standard form of access agreement, NBN Co must provide a statement of the differences to the ACCC.
- **Special Access Undertaking (SAU):** In December 2013, the ACCC accepted an SAU lodged by NBN Co, in accordance with section 152CBA of Part XIC of the Competition and Consumer Act. The SAU specifies basic terms and conditions under which NBN Co will provide its wholesale services.
- **Authorised conduct:** The NBN Access Act introduced Division 16 into Part XIB of the Competition and Consumer Act, which authorises, for the purposes of the Act, certain conduct by NBN Co that is reasonably necessary for it to achieve uniform national wholesale pricing. This conduct relates to refusal to interconnect other than at listed points of interconnection, the bundling of services and cross-subsidising in charging for services. However, current Government policy on the issue of uniform pricing may result in differential charging between urban, rural and remote locations.
- **Telecommunications Act:** The NBN Access Act applies to fixed-line local access networks, or parts of such networks, that are built, upgraded, altered or extended after 1 January 2011 so that they are capable of providing a carriage service where the download transmission speed is normally more than 25 megabits per second to residential or small business owners.

REGULATORY BODIES OR AUTHORITIES

The [Australian Competition and Consumer Commission's](#) main responsibilities include:

- The promotion of competition within the Australian telecommunications industry and to ensure that consumers' interests are protected
- Overseeing the telecommunications access regime provisions for controlling anti-competitive conduct and price control arrangements
- Focussing on access determinations to bottleneck services

The [Australian Communications and Media Authority's](#) main responsibilities include:

- Forming part of the Department of Infrastructure, Transport, Regional Development and Communications
- As a converged telecommunications regulator, overseeing the broadcasting, internet, radio communications and telecommunications industries
- Regulating technical and non-competition aspects of the industry, licensing telecommunications carriers, regulating fixed-line and mobile telecommunications, developing codes of practice for the industry and monitoring compliance, monitoring the performance of carriage service providers, setting and enforcing industry and technical standards and monitoring industry performance numbering, advising consumers on their rights and safeguards and managing the delivery of services to people with communication impairment

The [Telecommunications Industry Ombudsman's](#) main responsibilities include:

- The provision of a fast, free and fair dispute resolution service for small businesses and residential consumers who have a complaint about their telephone or internet service
- Being an independent body that complies with the Commonwealth's Benchmarks for Industry-Based Customer Dispute Resolution Services [here](#)

The [Communications Alliance's](#) main responsibilities include:

- Being an industry body for the communications industry
- Promoting the growth of the communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance that uses practical, self-imposed solutions that are developed co-operative processes

The [Communications Compliance's](#) main responsibilities include being an independent monitoring body that oversees conduct of the Telecommunications Consumer Protections Code Compliance Framework, providing guidance on how to comply with the code and providing an overview of industry compliance. It should be noted that the Communications Compliance does not actually enforce compliance (ACMA is, in most cases, the key enforcement body).

The [Attorney General's Department's](#) main responsibilities include administering the Telecommunications (Interception and Access) Act 1979 and the Surveillance Devices Act 2004. However, the department does not investigate crimes (relevant police enforcement agencies investigate and potentially prosecute).

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Installing Facilities

The Telecommunications Act 1997 restricts carriers in their installation of telecommunications facilities. Primarily only low-impact facilities, which are designed to be unobtrusive and to be installed in line with the legislation, are permitted. Superfast network obligations also arise under the same legislation which limit the installation of superfast networks (in connection with the rollout of the NBN).

Approval of telecommunications facilities is the responsibility of the local government authority in the area.

Service Providers

Service providers including Carriage Service Providers (CSP), that use, but do not own, a telecommunications network unit to provide carriage services to the public (including Internet Service Providers and Internet Access Providers, as they fall within the category of a CSP), and content service providers that supply content services to the public must comply with obligations imposed by the telecommunications access regime, in addition to the following regulations:

- The Telecommunications Act 1997
- The Telecommunications (Consumer Protection and Service Standards) Act 1999
- The Competition and Consumer Act 2010
- The Telecommunications Consumer Protections Code

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

In addition to the registration of a business name with the Australian Securities and Investments Commission, the following registration and licensing requirements must be adhered to:

- **Telecommunications licence:** Except in limited circumstances, the owner of a network unit (cable, wireless, or satellite) used to supply carriage services to the public must hold a Carrier Licence. Carriage Service Providers do not need a licence but must comply with the codes set out in the “Carriers and Carriage Service Providers” section.
- **Content Service Providers:** If a company uses, or proposes to use, any point-to-point carriage service to supply an online service to any other person that is not an officer of the company or a related body corporate then the company is a Content Service Provider under the Telecommunications Act 1997. A Content Service Provider is a general classification of industry participants supplying content services to the public. There is no licence required, however the company will need to comply with the content rules determined by ACMA.
- **Installation Services:** If a company provides installation services for customers that involve customer cabling then they must register with ACMA and comply with the Telecommunications Cabling Provider Rules 2000 issued by ACMA.
- **Radiocommunications Equipment:** A CSP that operates radiocommunications equipment for the purpose of supplying carriage or content services may need to be licensed under the Radio Communications Act 1992. If a radio transmitter or receiver is required to provide services, the company will require a Spectrum, Class or Apparatus Licence.

There may also be local council planning regulations relating to the location of certain infrastructure (base stations, transmitters etc). The nature of these regulations differ between different council areas.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

No domicile requirements apply for carrier licences, provided that the applicant is a 'constitutional corporation', an 'eligible partnership' or a public body.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Domestic inter-carrier roaming

Domestic inter-carrier roaming is not a declared service (although it has been the subject of a regulatory enquiry to determine whether it should be) and is regulated through commercial agreements reached between the relevant carriers.

International roaming

This is governed by the Telecommunications Service Provider (International Mobile Roaming) Determination 2019.

The Standard focused on four key consumer protection measures:

- A notification via a nominated method of communication to be sent to all consumers on arrival overseas, warning them that significantly higher charges for using roaming services may apply
- Enabling customers to stop international roaming at any time and at the maximum cost of AUD 1, including from an overseas location
- A notification to be sent via a nominated method of communication to customers of service providers giving them pricing information for using a range of roaming services. These services include any that would normally be free in the domestic market, such as receiving a call on a mobile device
- Spend management tools, including notifications in AUD 100 increments for data usage and notifications at 50, 85 and 100% of included value, if a customer has purchased an included value travel package from their International Roaming Mobile (IMR) service provider

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Differences between provision of services to businesses and provision of services to consumers

Subject to contractual commitments agreed between the service provider and the end customer, and as set out below, there are no significant differences in terms of the regulatory treatment of end users of telecommunications services from a general level.

Requirements for provision of services to consumers

- This is principally governed by the Telecommunications Consumer Protections Code, and complaints handling is governed by the Telecommunications (Consumer Complaints Handling) Industry Standard 2018
- Consumers and small businesses can complain to the Telecommunications Industry Ombudsman. Resolutions by the ombudsman are legally binding to the value of AUD 50,000
- If a service is 'declared' by the ACCC, standard access obligations then apply updated consumer protections have been implemented by industry code C628:2019 Incorporating Variation No.1/2022 Telecommunications Consumer Protections (Updated 16 June 2022), which provides further consumer protection safeguards relating to sales, service and contracts, billing, credit and debt management and changing suppliers. It also sets out a framework of code compliance and monitoring

Prohibition on unfair contract terms in the Australian Consumer Law will likely apply to any standard form contract agreed between a service provider and an individual end user or corporate customer (where certain conditions are met).

REGULATORY TAXES AND FEES

Telecommunications carriers who earn AUD 25 million or more in any eligible revenue period are required to pay annual levies and charges including the telecommunications industry levy, and the annual Carrier Licence charge. These are calculated based on their eligible revenue for the previous financial year.

The current fee for an application for a Carrier Licence is AUD2122. This fee covers the cost of processing the application.

Installation services

All individuals performing cabling work, except 'plug and play' cabling of customer equipment (which is not in a wall or ceiling cavity) must be a registered cabler for open cabling work.

Importation of goods for the provision of telecommunication services

Goods imported into Australia with a value above AUD 1000, including commercial quantities, must be cleared by submitting a completed import declaration form and paying duty, GST, and other taxes and charges that apply. The duty rates payable will depend on the tariff classification, the value of the goods in the exporting country and where the goods were manufactured. The Customs Tariff Act 1995 provides the tariff classifications, duty rates, interpretive rates and information on preference schemes, and other concessions and exemptions that may apply.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Infringement Notices

Under the Telecommunications Act 1997, ACMA can, instead of instituting court proceedings, give infringement notices for alleged contraventions of certain civil penalty provisions relating to telecommunications. If the penalty under the infringement notice is paid within the specified time frame (or other period agreed to by ACMA) then civil penalty proceedings cannot be initiated and the matter is disposed of without admission of guilt or a conviction. If the penalty is not paid then court action may be taken for civil penalties in relation to the alleged contravention.

Civil Penalties

The penalty specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to 60 penalty units or, for breaches of the service provider rules or carrier licence conditions, the Minister for the Department of Infrastructure, Transport, Regional Development, Communications and The Arts may set a pecuniary penalty amount in a Determination up to 1,800 penalty units.

Privacy Laws

The Office of the Australian Information Commissioner is responsible for breaches of the Privacy Act 1988 (Cth).

Breach of Telecommunications Consumer Protections Code

ACMA enforces the code and it can take the following steps:

- Agree with the telecommunications provider on steps it will take to remedy the breach or improve compliance
- Give a formal warning
- Give a Direction to Comply with code provisions

Telecommunications Industry Ombudsman

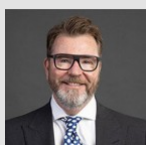
- Is authorised to investigate complaints by residential and small business users of telecommunications and internet services
- Can enforce resolution of complaints of up to AUD 50,000, and make recommendations for complaints of up to AUD 100,000

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