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| Guide – Applying for a facility installation permit |
|  |
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Introduction 1

Key features of a facility installation permit 1

Permit issue process 1

Overview of application and assessment process 1

Facility installation permit: assessment criteria 2

Administrative process 3

Evaluation of a facility installation permit application 3

Application Phase – key points 4

Public Inquiry Phase – key points 4

Permit Issue Phase – key points 5

Evaluation of facility installations against criteria 5

Compliance and review 9

More information 10

# Introduction

A facility installation permit (FIP) is a written instrument issued by the Australian Communications and Media Authority (the 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.

The 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*](https://www.comlaw.gov.au/Series/C2004A05145) (the 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

* 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.
* The 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 the ACMA in the permit and the carrier must comply with such conditions.
* A permit has effect subject to the 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 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 the ACMA, surrender that permit.

The 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 the 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 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.

The 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 Act explicitly provides that the 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:
	1. the geographical reach of the network;
	2. the number of customers connected, or likely to be connected;
	3. the importance of the network to the national economy;
	4. 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:
	1. the technical context of the network;
	2. the economic context of the network; or
	3. 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:
	1. the long-term interests of end-users;
	2. the timely supply of competitive carriage services to the public;
	3. contribution to the fulfilment of the universal service obligation;
	4. co-location, or future co-location, with one or more other facilities;
	5. other additional technical, economic or community contributions.
6. The identified advantages of the specified facilities outweigh any potential environmental degradation having regard to:
	1. the visual effect on streetscapes or other landscapes;
	2. any adjacent area, place or thing that is identified, protected, reserved, or listed under a Commonwealth, state or territory instrument;
	3. any potential effect on a threatened species or an endangered ecological community;
	4. any adjacent area, place or thing of significance to Indigenous Australians;
	5. any relevant Australian obligations under a listed international agreement;
	6. any other particular matter of local environmental significance.

## Administrative process

The Compliance and Monitoring Section within the ACMA is responsible for the overall administration of the FIP process. In considering specific applications, the ACMA may constitute an expert evaluation group headed by a designated ACMA officer and including officers of other Commonwealth departments and agencies, such as:

* Australian Competition and Consumer Commission (ACCC)
* Department of the Environment and Energy (DEE).

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

## Evaluation of a facility installation permit application

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 the ACMA’s decision to either refuse the application or to proceed to a public inquiry as required by the Act. See key points relating to the Application Phase below.

Public Inquiry Phase

Commencing with the 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 the ACMA’s in-principle decision to issue a permit and concluding with formal issue of the permit incorporating any conditions imposed by the ACMA to address specific issues identified during the Public Inquiry Phase. The ACMA will undertake detailed negotiations with the respective carrier to resolve the terms of the permit to both the 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 in the application for a facility installation from.
* A person making application on behalf of a licensed carrier must provide the 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 **$7,474** application charge.
* Activities of ACMA workers in connection with dealing with a facility installation permit application that do not relate to the conduct of a public inquiry in relation to the permit has an hourly rate charge of **$202**.
* Receipt of the application will be acknowledged by the 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.
* The 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 the 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.
* The 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 Act provides for the applicant to request the ACMA to reconsider its decision.
* The Act provides that a reconsideration decision is reviewable by the AAT.

### Public Inquiry Phase – key points

* The ACMA is required under the Act to hold a public inquiry prior to issuing an FIP.
* The ACMA will notify the applicant of its intention to proceed with a public inquiry and request payment of the **$54,540** charge within the specified period (five business days or such longer period as ACMA may agree).
* Activities of ACMA workers in relation to the holding of the public inquiry in relation to the issuing of a facility installation permit has an hourly rate charge of **$202.**
* Any other expenses incurred by the ACMA in relation to the holding of the public inquiry in relation to the issuing of a facility installation permit will be charged at the **actual cost**. These expenses including the following:
	+ daily payments to members or associate members under a determination made by the Remuneration Tribunal;
	+ travel costs and allowances to members, associate members or ACMA staff;
	+ transcript costs;
	+ legal costs;
	+ consultant costs;
	+ costs associated with the hire of venues for public hearings.
* Failure to pay the inquiry charge will result in the application being deemed to have been withdrawn.
* The 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 the 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 the ACMA.
* The ACMA must provide the applicant with written notice of its decision to reject an application.
* The ACMA will consult the ACCC and DEE about each application that proceeds to public inquiry.
* The ACMA will consult as required with other Commonwealth departments and agencies, including the Director of National Parks and Wildlife and the Australian Heritage Commission.
* The 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 the ACMA’s initial consideration.
* The 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.
* The 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

* The 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.
* The 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 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.
* The 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 the ACMA in the permit and the carrier must comply with such conditions.
* A permit has effect subject to the 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 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 the ACMA, surrender that permit.
* The 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. The 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, the 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 includes a requirement for the applicant to provide a comprehensive submission including necessary supporting evidence and expert reports establishing the grounds for the ACMA to issue an FIP.

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

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 Act state that the 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), the 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 Act does not take away the rights a carrier may have under state law to appeal from an adverse decision by a local council.

1. **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 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.

1. **The telecommunications network to which the specific facilities relate is, or is likely to be, of national significance having regard to:**
2. **the geographical reach of the network;**
3. **the number of customers connected, or likely to be connected;**
4. **the importance of the network to the national economy;**
5. **such other indicators of national significance that may be relevant.**

Subclause 27(1)(a) of Schedule 3 to the Act requires the 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, the 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.

The 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.

1. **The specific facilities represent, or are likely to represent, an important part of the respective network having regard to either of:**
2. **the technical context of the network;**
3. **the economic context of the network; or**
4. **the social context of the network.**

Subclause 27(1)(b) of Schedule 3 to the 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, the 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 the ACMA’s determination under this criterion.

1. **Installation and operation of the specific facilities as part of the respective network will produce advantages to the community having regard to:**
2. **the long-term interests of end-users;**

Subclause 27(5)(a) of Schedule 3 to the Act provides that in determining whether the advantages of the facility outweigh degradation of the environment, the 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 [*Competition and Consumer Act 2010*](https://www.legislation.gov.au/Series/C2004A00109) —that is, by assessing whether they are likely to achieve the objectives of:

1. the objective of promoting competition in markets for listed services;
2. the objective of achieving any‑to‑any connectivity in relation to carriage services that involve communication between end‑users;
3. the objective of encouraging the economically efficient use of, and the economically efficient investment in:
	1. the infrastructure by which listed services are supplied; and
	2. any other infrastructure by which listed services are, or are likely to become, capable of being supplied.

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 the ACMA’s determination under this criterion.

1. **the timely supply of competitive carriage services to the public;**

Subclause 27(5)(c) of Schedule 3 to the Act provides that in determining if the advantages of the facility outweigh degradation of the environment, the 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.

1. **contribution to the fulfilment of the universal service obligation;**

Subclause 27(5)(e) of Schedule 3 to the Act provides that, in determining whether the advantages of the facility outweigh degradation of the environment, the 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 Corporation Limited.

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.

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

Subclause 27(5)(f) and (g) of Schedule 3 to the Act provide that, in determining whether the advantages of the facility outweigh degradation of the environment, the 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, the ACMA will consider this criterion on a case-by-case basis.

The ACMA notes that Part 5 of Schedule 1 to the 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 Act). Carriers installing facilities under an FIP are bound by the obligation in Part 5 of Schedule 1 to the Act.

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 Act.

1. **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. The 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.

The ACMA will also have regard to the objects of the 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 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’.

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

Subclause 27(5)(b) of Schedule 3 to the Act provides that, in determining whether the advantages of the facility outweigh degradation of the environment, the 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, the 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 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 Act gives the ACMA the power to give written directions to a carrier in connection with performing any of the 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 Act and thereby also constitutes a breach of a carrier licence condition under Part 1 of Schedule 1 to the Act. The 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

The ACMA may cancel an FIP by giving written notice to the holder of the permit. In making a decision to cancel a permit, the 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 the ACMA deems relevant.

Surrender of facility installation permit

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

Guidelines regarding performance of functions and exercise of powers

The 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, the ACMA must have regard to them, as well as to any other matters it considers relevant.

## More information

Applicants are advised to contact the Compliance and Monitoring Section to discuss an application for a facility installation permit early in the planning process. This will enable ACMA staff to provide relevant advice and guidance about the application process.

The Manager

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