

MEMORANDUM OF UNDERSTANDING

Made on the 22 day of December 2008

BETWEEN

Australian Communications and Media Authority, a body corporate established under section 6 of the *Australian Communications and Media Authority Act 2005*

AND

Department of Defence (Defence)

AND

Australian Defence Force (ADF)

INTRODUCTION

1. Schedule 3A to the *Telecommunications Act 1997* provides that ACMA may declare protection zones in relation to submarine cables. Under this power ACMA has declared a number of protection zones.
2. Under the *Defence Force Regulations 1952*, the Minister for Defence may declare any area of land, sea or air in or adjacent to Australia to be a defence practice area for carrying out a defence operation or practice. Under this power, the Minister for Defence has declared a number of defence practice areas including areas that are within or partially within a protection zone.
3. In a protection zone, certain activities are prohibited and restrictions may be imposed on other activities. For example, the use of an explosive or explosive device may be subject to the restriction that the activity only occurs in the course of an exercise conducted by or with the Australian Defence Force within a defence firing practice area.
4. The purpose of this Memorandum of Understanding (MOU) is to protect cables in a protection zone from Defence-related activities conducted in defence practice areas which are within, or which overlap with protection zones and to ensure that cable carriers are aware of their obligations in relation to accessing defence practice areas that exist within protection zones.

INTERPRETATION

5. For the purposes of this MOU:
 - a) **Defence** is to be taken as encompassing the Department of Defence and the Australian Defence Force; and
 - b) Unless the contrary intention appears,
 - (i) a word or phrase used in this MOU will have the same meaning as in Schedule 3A to the *Telecommunications Act 1997*;
 - (ii) a word or phrase used in this MOU will have the same meaning as in a Declaration of a protection zone that restricts the use of an explosive or an explosive device;
 - (iii) **defence practice area** means a defence practice area declared under the *Defence Force Regulations 1952*;

UNDERTAKINGS

6. Defence undertakes that it will amend procedures for operations in defence practice areas where those operations may impact on protection zones as follows:
 - a) inert practice rounds only should be used if there is a possibility of an impact in a protection zone; and
 - b) the weapons firing should occur to the greatest extent practicable with the firing unit located over the cable and with firing directed away from the cable; and
 - c) the firing should not be directed at targets located within the protection zone.
7. Defence also undertakes to amend procedures related to its submarine operations to preclude bottoming of submarines within protection zones.
8. Defence recognises the rights of cable carriers in a protection zone that includes part of a defence practice area to access cables located in the defence practice area in that zone for the purposes of maintenance of those cables or to install new cables in accordance with a protection zone installation permit issued by ACMA under the *Telecommunications Act 1997*.
9. ACMA undertakes to advise all cable carriers:
 - a) whose cables are in or who apply to install a cable in a defence practice area in a protection zone of the area of the defence practice area and the fact that they will require permission of Defence to access the defence

practice area at certain times under regulation 53 of the *Defence Force Regulations 1952* (or they may be prosecuted);

- b) that, prior to accessing cables, or installing a new cable, in a defence practice area in a protection zone, the carrier should consult with Defence and advise Defence of the access requirements with a view to negotiating appropriate access arrangements.

10. ACMA undertakes to consult with Defence:

- a) where ACMA has received an application for a permit to install a submarine cable in Australian waters that are not in a protection zone, where that submarine cable could pass through or near a defence practice area; and
- b) before making or varying any declarations of prohibited conduct or restricted activity which are to apply in areas of Australian waters which are within defence practice areas.

11. In giving these undertakings, ACMA and Defence note that they will endeavour to work with goodwill and in cooperation to achieve outcomes acceptable to both parties; allowing both to meet their obligations under the law and to the Australian people.

12. ACMA and Defence also note that nothing in this document is intended to, or has the effect of, modifying any obligation that either has under the laws of the Commonwealth of Australia or its States and Territories.

SIGNATORIES

Signed for and on behalf of the
Australian Communications and
Media Authority

Signature

CHRISTOPHER CHAPMAN

Name

CHAIRMAN

Title

5/12/08

Date

Signed for and on behalf of the
Department of Defence

Signature

Michael G. Healy

Name

Assistant Secretary Property Services

Title

22nd Dec 2008

Date

Signed for and on behalf of the
Australian Defence Force

Signature

Name

Title

Date