

To the Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601

Submission response—Possible amendments to telecommunications powers and immunities

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Yes

Date of submission

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Logo of organisation—if an organisation making this submission



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A handwritten signature in black ink, appearing to read "Mike Dowling", with a long horizontal flourish extending to the right.

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General comments

<response>

Responses

The Australian Government seeks views on possible amendments to telecommunications carrier powers and immunities. In particular, the Government seeks views on:

Proposed amendments to the Telecommunications (Low-impact Facilities) Determination 1997

1. Definition of co-located facilities

1.1 Are there any issues with this proposed clarification to the definition of co-location?

Council's water towers are considered by the Department of Health NSW to be critical high risk components of the Central Coast's water supply system. To maintain their integrity from unauthorised access and possible contamination Council must provide security, regular inspection, testing and maintenance programs. In this regard Council cannot consider any proposal that will diminish Council's rights to secure the sites and maintain 24/7 access to and control over those sites. This submission has been prepared in consideration of those rights and obligations to public health and safety.

Council expresses concerns with the co-location definition in respect to the carrier's perceived rights to install and co-locate low-impact facilities on Council's water towers and other building structures. It is considered that the presence of these facilities will have an adverse impact on Council's ability to maintain and operate its infrastructure with the potential of increased maintenance and operational costs, adverse impacts on the asset structural integrity and durability and increased compliance costs associated with radiation hazards and worker safety. Council remains concerned that further relaxation in the Telecommunications Determinations will have cumulative impacts on Council's ability to properly maintain its infrastructure and operations in a sustainable and compliant manner.

Where a new facility is considered to be co-located it is not be given any transfer rights to be installed as part of an existing structure without being independently assessed by Council as a new separate facility. Any new facility must take into account and demonstrate no cumulative impact on Council's structure and operation.

2. Local government heritage overlays

2.1 Are there any issues with this clarification in relation to local government heritage overlays?

<response>

3. Radio shrouds as an ancillary facility

3.1 Should radio shrouds be considered ancillary facilities to low-impact facilities, or should radio shrouds be listed as distinct facilities in the Schedule of the LIFD?

Radio shrouds should be considered as distinct facilities as they are not necessary for the operation or functioning of a low-impact facility.

Whilst radio shrouds are visually friendly, shrouds can potentially impede access to Council's structures and assets, impede works on those structures as well as imposing additional loads on

the underlying structures. A structural certification must be provided to Council for the installation of shrouds certifying that the structural integrity of Council assets will not be compromised as a result of the additional (cumulative) loads.

3.2 If listed as distinct facilities in the Schedule of the LIFD, should there be any criteria for radio shrouds, for example in terms of size and dimensions?

Each of the following considerations must be made for radio shrouds:

- Weight
- Dimensions
- Size
- Visual impact
- Health and safety
- Colour
- Operational activities impact
- Maintenance and access impact
- Structural integrity of the assets carrying the cumulative shrouds loads
- Available space of the site

4. Size of radiocommunications and satellite dishes

4.1 Are there any issues with permitting 2.4 metre subscriber radiocommunications dishes (or terminal antennas) in rural and industrial areas (LIFD Schedule, Part 1, Item 1A)?

There should be no distinction made between residential, rural or industrial areas as any telecommunication works on Council assets will have the same net result. Increasing antenna size from 1.8 to 2.4m will impede access to Council's water utility assets and buildings for operational and maintenance purposes. In addition, it will increase the dead and wind load on these assets given that many assets (water towers) are in exposed locations.

The health and safety of Council's workers on-site remain a concern given the uncertainty of the RF EME risk and impacts associated with the varying antenna dish size. It is crucial that cumulative RF EME risk and impact at each site be assessed and quantified given Councils need for 24/7 access to such structures

Any new dish will require to be independently assessed by Council with respect to each of the following:

- Weight
- Dimensions
- Size
- Visual impact
- Health and safety
- Colour
- Operational activities impact
- Maintenance impact
- Structural integrity of Council's structures/assets
- Available space of the site
- RF EME exposure

- 4.2 Are there any issues with permitting other 2.4 metre radiocommunications dishes in rural and industrial areas, including those located on telecommunications structures (LIFD Schedule, Part 1, Item 5A)?

Same as 3.2 and 4.1

5. Maximum heights of antenna protrusions on buildings

- 5.1 Is a 5 metre protrusion height acceptable, or is there a more appropriate height?

It is generally expected that the higher the protrusion, the larger the footprint required to support an aerial facility with a resultant adverse impact on Council's structure and operation. Higher protrusion is also considered as a visual impact to local communities and accordingly would require to be assessed by Council

The advantage of having higher protrusion is that it will allow antenna facilities to be installed higher with a possible reduction in RF EME levels at the platform level of Council's structures will need to be demonstrated in any application.

Council requires that each installation be assessed based on its merits and each of the following must be assessed:

- Weight
- Dimensions
- Size
- Visual impact
- Health and safety
- Colour
- Operational activities impact
- Maintenance impact
- Structural integrity of Council's structures/assets
- Available space of the site
- RF EME exposure
- Stray current corrosion potential

- 5.2 Are higher protrusions more acceptable in some areas than others? Could protrusions higher than 5 metres be allowed in industrial and rural areas?

Same as 5.1

6. Use of omnidirectional antennas in residential and commercial areas

- 6.1 Are there any issues with permitting omnidirectional antennas in residential and commercial areas, in addition to industrial and rural areas?

The installation of Omnidirectional antennas on Council's structures must not impede 24/7 safe access for Council's maintenance staff and be demonstrated not compromise structural integrity of Council's assets. Each of the following considerations must be assessed for each omnidirectional antenna proposal:

- Weight
- Dimensions
- Size
- Visual impact
- Health and safety
- Colour

- Operational activities impact
- Maintenance impact
- Available space of the site
- RF EME exposure
- Stray current corrosion potential

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

Cumulative effects of the proposed radio communication facilities must be considered by relevant Council asset owners as part of Council's approval process. In addition, each of following considerations must be assessed for each individual facility:

- Weight
- Dimensions
- Size
- Visual impact
- Health and safety
- Colour
- Operational activities impact
- Maintenance impact
- Structural integrity of Council's structures/assets
- Available space of the site
- RF EME exposure
- Stray current corrosion potential

7.2 Are the proposed dimensions for these facilities appropriate?

Same as 7.1

8. Equipment installed inside a non-residential structure in residential areas

8.1 Should carriers be able to enter land (including buildings) to install facilities in existing structures not used for residential purposes in residential areas?

Council does not support this amendment as Council's structures and buildings are typically designed to accommodate existing and future growth related infrastructure. Unplanned installation of third party equipment of any kind has the potential to infringe on minimum safety requirements impede Council's ability to provide for safe access and egress and fire protection and upgrade potential of infrastructure within the building resulting in increased capital works costs for Council.

The proposed amendment will present unacceptable security risks to Council with respect to unauthorised access to critical Council infrastructure. Any radio communication facilities installed within the confines of a water reservoir roof will compromise the security of the water quality contained within the reservoirs and the integrity of the reservoir itself.

9. Tower extensions in commercial areas

9.1 Are there any issues permitting tower height extensions of up to five metres in commercial areas?

Council has concerns to this proposal in respect to the following:

- The risk that more radio communication facilities will be fitted to the tower, leading to higher cumulative emission of electromagnetic radiation and structural loads impacting Council's ability to maintain and operate the structure,

- Structural integrity of the underlying Council asset
- Safety of Council workers and contractors on site
- Support and connection details and subsequent impacts on the maintenance of Council's asset
- Visual impact

10. Radiocommunications lens antennas

10.1 Is lens antenna the best term to describe this type of antenna?

<response>

10.2 Are 4 cubic metres in volume and 5 metres of protrusion from structures appropriate?

Given that Council's sites by nature are constrained, each installation is unique and will be assessed by Council based on its merits.

10.3 Should this type of antenna be allowed in all areas, or restricted to only industrial and rural areas?

As each installation is unique, each will require to be assessed by Council based on its merits.

11. Cabinets for tower equipment

11.1 Are there any issues with the proposed new cabinet type?

Cabinets for tower equipment should be installed within a separate telecommunication site compound and their locations must not compromise security of the site, Council's access to and around the site, Council's operational and maintenance works or underground assets. These cabinets must not compromise public safety and structural integrity of Council's assets.

Cabinet locations must take into consideration Council's potential for the future expansion and enhancement of its infrastructure within the site to accommodate growth related demand and regulatory requirements to maintain safe drinking water supplies.

As each cabinet proposal is unique, Council requires that each installation be assessed based on its merits.

12. Size of solar panels used to power telecommunications facilities

12.1 Are there any issues with permitting 12.5 square metre solar panels for telecommunications facilities in rural areas?

As any development on or within Council's sites or assets will impact on Council's operations, any solar panel proposal is to be independently assessed by Council based on its merits in conjunction with appropriate structural certifications if these panels are to be installed on Council's structures.

Where new or existing solar panel facilities are proposed to be located within land managed by Council, they are to be confined within the carrier's compound site. In addition, Council's Natural and Environmental Assets will not be responsible for approving, allowing or carrying out any vegetation management for solar panel access at the site.

13. Amount of trench that can be open to install a conduit or cable

13.1 Are there reasons not to increase the length of trench that can be open at any time from 100m to 200m in residential areas?

Installing a cable or conduit via open cut trenching is generally considered highly disruptive to local communities, especially in residential, commercial and other highly populated.

Council considers that increasing to length of an open trench from 100m to 200m length of trench will present an unacceptable increase in the disruption to local communities during construction. The following consequences are expected to occur:

- Increased congestion with local streets
- Reduced and disturbed footpath spaces
- The inability to properly back-fill and restore at the end of the working day and the subsequent ongoing effects
- The risk of ongoing costs to Council associated with poor restoration standards and subsequent remedial works
- Disruption to local businesses by reducing foot traffic and street access
- Increased number of trucks for carrying dirt and materials around local streets and associated degradation in pavement life
- Restricted access to Council's underground assets during maintenance or emergency situations
- Increased risks associated with trench collapse through lack of support (especially during rain event) and subsequent damage to underground services and pavement
- Increased sediment runoff potential from the site
- Reduced effectiveness of an emergency response

13.2 Is 200m an appropriate length, or should the length be higher if more than 200m of conduit or cabling can be laid per day and the trench closed?

Refer to response from 13.1. Length of open trench should be restricted to 100m maximum at a time subject to the trench being fully compacted, backfilled and restored by the end of the day and a trench should not be left open when site is not in use.

14. Cable & conduit installation on or under bridges

14.1 Are there any issues with allowing cable and conduit on bridges to be low-impact facilities?

Council does not support the proposal to allow the attachment or laying cable or conduit onto or within a bridge structure to be a low impact activity.

Bridges are an actively managed asset held by the Road Authority subject to the following:

- Regular safety inspections
- Regular structural inspections
- Lifecycle maintenance operations
- Component renewal operations
- End of life replacement
- Load testing

The attaching of a conduit or cable to a bridge structure will cause added expense and complication to the bridge operations of the Road Authority unless it is appropriately managed under a memorandum of understanding or a lease or cost sharing agreement. Due to the possible

impositions caused by such an installation it is Council's opinion that conduits and cable attached to bridges should NOT be a low impact facility.

Where telecommunication cables and conduits are attached to a bridge, telecommunication facilities should not interfere or compromise Council's day-to-day operation or assets owned by other utility/service providers.

15. Volume restrictions on co-located facilities

15.1 Are there any issues with removing volume limits for adding co-located facilities to existing facilities and public utility structures in commercial areas?

An increase in volume of telecommunication facilities on Council structures will impede access for maintenance/operational purposes and may compromise structural integrity of Council structures to accommodate additional load.

Council requires each new facility proposal be accompanied by appropriate structural certification examining the cumulative effects of all co-located facilities on the structure as well as assurances that such installations will not impede safe access to Council's structures and associated hatches and walkways at all time.

15.2 Are there any issues with permitting new co-located facilities that are up to 50 per cent of the volume of the original facility or public utility structure in residential areas?

Same as 15.1

15.3 Is another volume limit more appropriate in commercial or residential areas?

Same as 15.1

15.4 Should alternative arrangements for co-located facilities be developed in the LIFD?

Yes, consideration should be given to co-locating telecommunication facilities on separate mono-pole solely for telecommunication purposes. Council structures such as water reservoirs were designed purely for water supply purposes and have finite cost effective life and as such the LIFD should consider the "sun-set" provision that any replacement structure will not be available for the installation of telecommunication facilities in the future. This is also the case for many council owned buildings based on life cycle analysis.

16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

Any updates need to be carefully vetted with thorough consideration of all pros and cons for each update.

16.2 Are there any further suggestions for updates to terms and references in the LIFD?

Same as 16.1

Proposed amendments to the Telecommunications Code of Practice 1997

17. Clarify requirements for joint venture arrangements

17.1 Are there any issues with making it clear in the Tel Code that only one carrier's signature is required on documents for facilities being installed as part of a carrier joint venture arrangement?

This arrangement is not accepted as it may potentially create uncertainty on which carrier will be undertaking works and there should be complete disclosure when working on sensitive infrastructure sites.

Individual agreement is therefore always required and one carrier signature is not applicable for other joint venture partners. This will ensure agreement of all parties and avoiding complication down the track.

18. LAAN objection periods

- 18.1 Is it reasonable to end the objection period for low-impact facility activities and maintenance work according to when the notice was issued, rather than the date work is expected to commence?

Council considers that it is unreasonable to end the objection period 5 business days from when a notice was issued as a notice potentially may not reach the recipient or land owner on the same day it was issued due to various factors not under Councils control. Large complex organisations such as Council cannot be expected to address short turn around correspondence in a 5 business days period for routine business matters where a complex number of issues need to be assessed and appropriate advice developed and presented.

The enforcement of such a short notice period may lead to Council objecting to the proposal where further information is required from the proponent to enable Council to make a fully informed decision and that information cannot be provided within the short time period.

It is also important to understand that not all notices are the same. For example, an activity notice for minor cable hauling works does not require a lot of time for Council to review the proposal. However where an NBN activity notice covering 50 drawings of proposed NBN installation at a time will definitely require longer time for Council to review the proposal. The 5 business days objection period in this case is likely to finish before Council completes its review of the proposal.

The objection period should therefore be as long as possible up until work commencement.

- 18.2 Is 5 business days from the receipt of a notice a sufficient time period for land owners and occupiers to object to carrier activities where carriers have given more than 10 days' notice about planned activities?

See response to 18.1.

5 business days objection period from the receipt of a notice is unrealistic timeframe to enable Council to review a proposal and make a fully informed submission.

19. Allow carriers to refer land owner and occupier objections to the TIO

- 19.1 Are there any issues with allowing carriers to refer objections to the TIO before land owners and occupiers have requested them to?

This is not supported as early reference to the Ombudsman by the Carrier may reduce the period of time for resolution of access matters between Carriers and Council.

20. Updates to references in the Tel Code

- 20.1 Are there any issues with the proposed changes?

<response>

- 20.2 Are there any further suggestions for updates to the Tel Code?

The proposed changes are not supported by Council if it is a down grade to existing parameters, for example:

- Reducing objection period for an activity notice
- Increasing volume of co-locating facilities without considering actual situation and structural integrity of the underlying Council's structure.

- Cables and conduits on bridges being considered as low-impact
- Disruption to local communities will be increased each day
- More radio communication facilities being allowed meaning higher cumulative EME from these facilities
- Visual impact resulting from larger facilities being installed at higher altitude

Whilst Council acknowledge the need for Carriers to install various telecommunication facilities in such a manner to meet high demand for telecommunication service and reducing cost, any amendment to the Telco Code should not disadvantage Councils in any way. Councils should not be adversely impacted nor having to incur any cost associated with the execution of telecommunication activities.

Possible amendments to the *Telecommunications Act 1997*

21. Allowing some types of poles to be low-impact facilities

21.1 Is it reasonable for poles in rural areas for telecommunications and electricity cabling for telecommunications networks to be low-impact facilities?

Due to permanent visual impact of the poles and the supported telecommunication infrastructure to the amenity of the rural area and associated community, it is unreasonable for poles to be considered as low-impact facilities. In this regard Councils are required to exercise due diligence in assessing such installation.

There is also a significant concern with allowing poles as low impact facilities to support cabling than continuing to use underground cabling in all areas. As low impact facilities, no Council consent would be required. There needs to be more detail provided as to the number of poles that can be expected to be installed. Such a proposal as it stands, has visual and environmental concerns as well as precedential concerns for other towers in the future being identified as low impact.

Poles should therefore be required to go through the normal planning approvals and the definition of tower should remain unchanged.

21.2 Should low-impact facility poles be allowed in other areas, or be restricted to rural areas?

Refer to response from 21.1

21.3 Is the proposed size restriction of up to 12 metres high with a diameter of up to 500mm suitable?

Refer to response from 21.1

21.4 Would the existing notification and objection processes for land owners and occupiers in the Tel Code be sufficient, or should there be additional consultation requirements?

No, the existing notification and objection processes are considered inadequate. Additional notification and objection time should be provided to land owners for consultation purposes.

Considering gas and electricity notifications allowing land owners with 40 days to review proposals and make submissions, it would be considered fair if the Telecommunication Act can provide land owners with a notification and objection period of 21 business days minimum prior to Carriers commencing an activity.

22. Portable temporary communications facilities

22.1 - Are there any issues with making portable temporary communications equipment exempt from state and territory planning approvals under certain conditions?

Not accepted. Portable temporary communications equipment should not be exempted from state and territory planning approvals as these facilities may impact local communities in various ways such as:

- Health and safety impact
- Visual and noise impact
- Compromise public spaces
- Clash with Council's operational and maintenance activities
- Compromise Council's access to its infrastructure
- Vehicular and pedestrian traffic impact

22.2 - Are there any suggestions for appropriate conditions for the installation of COWs and SatCOWs, such as circumstances in which they can be used and timeframes for their removal?

See response from 22.1

22.3 - Should the Act be amended to remove any doubt that MEOs can be installed using the maintenance powers or another power under Schedule 3 of the Act?

No, planning approvals are required. See response from 22.1.

22.4 - Are there any suggestions for appropriate conditions for the installation of MEOs if the maintenance powers are amended?

<response>

23. Replacement mobile towers

23.1 Is the proposal reasonable?

Not accepted. Replacement should be under Part 1 Div. 4 of Sch. 3 (Maintenance provision) only.

The existing provisions allow for consent not to be required if the tower is replaced in the same location on the site. However allowing a replacement to be 20m away from an existing tower may involve environmental issues that were not relevant in the original approval for the first tower and under the amendments proposed would not be subject to an assessment under a development application.

It is expected that the proposed change may also lead to having two towers on a single site at the same time. In addition, the 20m radius may move a tower to a location which may be considered less acceptable by Council and its communities.

23.2 Is 20 metres a suitable distance restriction for replacement towers?

Refer to 23.1

23.3 Is 12 weeks a reasonable maximum time period for installation of replacement towers?

Refer to 23.1

24. Tower height extensions

24.1 Are one-off 10 metre tower height extensions suitable in commercial, industrial and rural areas, or only some of these areas? If they are only suitable in some areas, which are they and why?

Planning approvals should apply and there is no valid reason for bypassing planning regulations. There is a strong emphasis in the amendments on adding extra heights or infrastructure to existing facilities. This raises issues associated with visual impact as well as structural capacity of the existing facility to accommodate these additions. A 10m tower height extension under low-impact would also introduce unnecessary risks to Council sites in safety terms and commercial terms.