

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

21 July 2017.

Logo of organisation—if an organisation making this submission



Name and contact details of person/organisation making submission

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General comments

FCNSW is responsible for the management of NSW State Forests in accordance with the Forestry Act 2012. There are over 300 telecommunication installations located within State Forests.

Several proposed amendments may require clarification to ensure they are consistent with FCNSW's obligations under the Forestry Act 2012 including the requirement for non-forestry users to have a Forest Permit.

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?

Yes.

FCNSW is responsible for the management of NSW State Forests.

We seek to ensure that a new facility installed ‘near’ an original facility remains subject to the occupier acquiring the requisite Forest Permit in accordance with Section 60 of the Forestry Act 2012 and pays the permit fee in accordance with FCNSW policy at the time.

Additionally, the definition should clarify that a new facility will continue to be classified as a co-located facility if its operation is fully or partially assisted by the presence of the original facility, regardless of location.

2. Local government heritage overlays

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

No comment.

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?

No comment.

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?

No comment.

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)?

Yes.

FCNSW is responsible for the management of NSW State Forests.

The size of the dish is not an issue in itself. However, we seek to ensure that larger dishes will not require a larger site footprint to accommodate structural fortification of the infrastructure to offset the additional wind load and weight.

Any possible disturbance of the earth or adjacent areas of flora/fauna should remain subject to the normal FCNSW approval process to identify, alleviate and prevent issues relating to Aboriginal cultural heritage and/or the environment.

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)?

Yes.

FCNSW is responsible for the management of NSW State Forests.

The size of the dish is not an issue in itself. However, we seek to ensure that larger dishes will not require a larger site footprint to accommodate structural fortification of the infrastructure to offset the additional wind load and weight.

Any possible disturbance of the earth or adjacent areas of flora/fauna should remain subject to the normal FCNSW approval process to identify, alleviate and prevent issues relating to Aboriginal cultural heritage and/or the environment.

5. Maximum heights of antenna protrusions on buildings

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

No comment.

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?

No comment.

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?

No comment.

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

No comment.

7.2 Are the proposed dimensions for these facilities appropriate?

No comment.

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?

No comment.

9. Tower extensions in commercial areas

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

No comment.

10. Radiocommunications lens antennas

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

No comment.

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

FCNSW is responsible for the management of NSW State Forests.

The size of the antenna is not an issue in itself. However, we seek to ensure that these antennas will not require a larger site footprint to accommodate structural fortification of the infrastructure to offset the additional wind load and weight.

Any possible disturbance of the earth or adjacent areas of flora/fauna should remain subject to the normal FCNSW approval process to identify, alleviate and prevent issues relating to Aboriginal cultural heritage and/or the environment.

The possibility that this technology could reduce the need for new towers is welcomed.

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

No comment.

11. Cabinets for tower equipment

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

No comment.

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?

Yes.

FCNSW is responsible for the management of NSW State Forests.

An increase in the existing site footprint to accommodate a larger array of solar panels may have implications within our State Forests with regard to Aboriginal heritage and/or the environment. Any such variation of the previously approved installation and site footprint should remain subject to either the pertinent Forest Permit terms and conditions or, if relevant, a new Forest Permit application.

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?

No comment.

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?

No comment.

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?

No comment.

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?

No comment.

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?

No comment.

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

No comment.

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

No comment.

16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

No comment.

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

No comment.

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?

Yes.

FCNSW is responsible for the management of NSW State Forests.

It is not clear if this proposed amendment intends to include Forest Permits in the definition of 'documents'.

The current situation is that each separate entity of an unincorporated joint venture is obliged to acquire a Forest Permit and pay the relevant permit fee in accordance with the Forestry Act 2012. In NSW, the permit fee is currently based on the recommendations of the Independent Pricing and Regulatory Tribunal (IPART).

IPART states in Section 6.4.2 of their report titled "Review of rental arrangements for communication towers on Crown land, July 2013" that a joint venture will only be considered as 1 entity where it is operating as a single incorporated legal entity. The IPART report notes that where the joint venture is unincorporated, rent is payable by each party to the joint venture arrangement.

The concern is that this proposed amendment will remove the current obligation for all parties subject to an unincorporated joint venture to acquire their own individual Forest Permit and pay their permit fee. There is a significant risk that the application of this amendment in its current form will be the catalyst for telecommunication companies to instigate a considerable overhaul of existing agreements within our portfolio creating significant administrative work and adversely impacting our income stream. FCNSW has limited resources to deal with such a circumstance.

A further concern is potentially removing the clear and unambiguous obligation for each party to perform to Forest Permit terms and conditions (protecting the interests of both the FCNSW and the NSW public) as at least one party will not be a signatory under the proposed amendment.

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?

Yes, provided there is a sunset date for the commencement of work of say 1-2 months.

This is required to ensure there is a minimal likelihood of any change during the intervening period of the circumstances on which the approval was based. It would be improper for a carrier to have perpetual approval to proceed.

- 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?

No.

The proposed time period is simply too short for an organisation like FCNSW to locate the appropriate internal resources, acquire and assess advice from various disciplines and respond to the notice. FCNSW is not a dedicated telecommunications company so the personnel involved have numerous other duties, may be on leave and will certainly be located within regional offices across the State of NSW.

In fact, an extension of the current 10 day period would be appreciated.

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?

Yes.

There are significant issues with this proposed amendment.

FCNSW is responsible for the management of NSW State Forests.

FCNSW is concerned the carriers could use the TIO as the default repository for all manner of issues including those of a minor and insignificant nature.

Unlike the carriers, FCNSW has limited resources to deal with such an eventuality and would be significantly disadvantaged in the process.

At the sole discretion of the carrier, FCNSW would be obliged to prepare Terms of Reference or respondent documentation, liaise with the TIO and attend to emails and meetings which is considered disadvantageous, onerous and unreasonable.

All new agreements for a Forest Permit to occupy a site within a State Forest must continue to be subject to the current application and assessment process. It would be unfortunate if the TIO became involved in dispute resolution at the sole request of the party with a commercial interest.

With regard to new sites, FCNSW is obliged to perform to the parameters of the Forestry Act 2012 and assess new applications for a Forest Permit on that basis.

With regard to existing sites, the terms and conditions of the prevailing Forest Permit (as agreed between the parties) must continue to be the primary basis for clarifying issues and resolving disputes. To do otherwise would unreasonably weaken the integrity of the Forest Permit.

The existing process is adequate and responsible. There is no need for change.

20. Updates to references in the Tel Code

20.1 Are there any issues with the proposed changes?

No comment.

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

No comment.

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?

No.

FCNSW is responsible for the management of NSW State Forests.

The issues related to the installation of these poles within a State Forest include the following:-

- The increased fire risk from electricity cabling,
- The requirement for an “Asset Protection Zone” (APZ) surrounding the installation pathway and which typically requires the clearance of all adjacent flora and fauna.
- The likelihood of the clearance of vegetation along the pathway of pole installation for maintenance access,
- Implications for adversely affecting Aboriginal cultural heritage,
- Implications for adversely affecting the environment.

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

No comment.

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

No comment.

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?

FCNSW is responsible for the management of NSW State Forests.

Any installation within a State Forest should continue to be subject to the usual Forest Permit application and assessment process.

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?

No comment.

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?

FCNSW offers the following suggestions.

- The proposed access route through State Forests be agreed by FCNSW to prevent damage to remote roads/trails, drainage and waterways.
- The proposed location for the unit to be agreed by FCNSW to ensure no issues arise relating to Aboriginal cultural heritage and/or the environment.
- The potential fire risk from a generator's fuel storage and exhaust must be acceptable to FCNSW.
- The potential noise emanating from a generator must be acceptable to FCNSW.
- The schedule for installation and removal must correlate with a reasonable maintenance period as advised to FCNSW. The installation of these units should be a temporary fixture only and should not become permanent or extended due to lack of activity on the carrier's behalf.

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?

Any such amendment must recognise that the terms and conditions of the Forest Permit relevant to the particular site (as agreed between the parties) has precedence.

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

FCNSW offers the following suggestions.

- The proposed access route through State Forests be agreed by FCNSW to prevent damage to remote roads/trails, drainage and waterways.
- The proposed location for the unit to be agreed by FCNSW to ensure no issues arise relating to Aboriginal cultural heritage and/or the environment.
- The potential fire risk from a generator's fuel storage and exhaust must be acceptable to FCNSW.
- The potential noise emanating from a generator must be acceptable to FCNSW.

The schedule for installation and removal must correlate with a reasonable maintenance period as advised to FCNSW. The installation of these units should be a temporary fixture only and should not become permanent or extended due to lack of activity on the carrier's behalf.

23. Replacement mobile towers

23.1 Is the proposal reasonable?

No.

FCNSW is responsible for the management of NSW State Forests.

Any site within a State Forest – and particularly if it entails a new site footprint – must be separately assessed by FCNSW with regard to the Forestry Act 2012 and Aboriginal cultural heritage and/or environmental implications.

A new site within a State Forest that can be located up to 20m away from an existing site would be sufficiently removed from the original Forest Permit application process that a new Forest Permit application and assessment process must always be undertaken. The previous approval will have no relevance to an alternative site.

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

No.

There should be zero permissible distance for sites within a State Forest. Any relocation within a State Forest that places the new tower outside the previously approved site footprint may inadvertently locate it within an area of cultural or environmental significance.

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

No comment.

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?

FCNSW is responsible for the management of NSW State Forests.

The tower extension is not an issue in itself. However, we seek to ensure that such an extension will not require a larger site footprint to accommodate structural fortification of the infrastructure to offset the additional wind load and weight.

Any possible disturbance of the earth or adjacent areas of flora/fauna should remain subject to the normal FCNSW approval process to identify, alleviate and prevent issues relating to Aboriginal cultural heritage and environment.

The possibility that an extension of height could reduce the need for new towers is welcomed.