LGAQ
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

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Consultation paper on improving the telecommunications powers and immunities framework

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Consultation paper on improving the telecommunications powers and immunities framework

The Local Government Association of Queensland (LGAQ) appreciates the invitation to contribute to the Department of Infrastructure, Transport, Regional Development and Communications consultation paper - *Improving the telecommunications powers and immunities framework*.

General comments

The LGAQ is of the general view that the regulatory regime frequently favours telecommunications carriers over planning, environmental and road authority cost and safety considerations. While carriers' focus on commercial objectives of market share and profits is understandable, it not infrequently undervalues the public interest.

It appears once again that proposals to reform the Low Impact Facilities Determination (LIFD) represent a thinly disguised push by industry to deflect public safety, amenity and the reasonable planning expectations of contemporary society. The LGAQ views this reform process as an opportunity to rebalance the interests of telecommunications carriers with local governments, road authorities and the affected and generally unheard public.

Telecommunications infrastructure should not only be subject to consultation with local government but, in many instances, subject to concurrence approval powers. Slim poles or smart poles, for example, are infrastructure posing visual amenity, heritage, public and traffic safety concerns that cannot be dismissed as low impact and are appropriately subject to planning assessment against accepted traffic safety and community values. Carriers must be able to demonstrate that such installations are safe and minimally visually obtrusive.

The proposal that such structures be designated a low impact facility is rejected by this Association and its member councils.

With respect to works on roads we see no reason for telecommunications carriers to be treated differently to other utilities.

Local government bears statutory responsibilities in ensuring public safety and human and environmental amenity. The nature, siting and operational works related to telecommunications infrastructure clearly intersect with these statutory obligations. Local government is not prepared to abrogate its responsibilities in the interests of expediency and profit.

These are the core principles of this submission.

The LGAQ supports proposed reforms including implementation of a primary safety condition, extended notification timeframes, engineering certification requirements and standard and enhanced notification processes and methods.

In relation to the structure of the paper, LGAQ maintains the following:

1. Safety and Notification

A. Creation of a primary safety condition

Safety in installation and location of telecommunications facilities, as well as maintenance standards, are a perpetual concern to local government. Safety obligations must be defined in regulatory standards with accompanying sanctions for non-compliance.

B. Standard notifications across industry

The LGAQ supports standard notifications across industry.

Carrier notices frequently lack critical details including, for example, infrastructure specifications or a reasonable approximation of the timing of works, and at times aggregate multiple works under a single notice. It is not unheard of for works to be misrepresented as “maintenance” or the location of works to be misrepresented.

Landowners including local governments and road authorities are entitled to timely, accurate and comprehensive information and should be similarly entitled to reject inadequate and misleading documentation. The Code of Practice is manifestly inadequate in stipulating details to be included in a notice. Notices should include details of prior consultation with the landowner or utility.

This Association would support an industry code registered by the Australian Communications and Media Authority (ACMA). Regulatory costs to carriers will minimise as carriers become accustomed to administrative processes supporting greater transparency and accountability.

C. Withdrawal of notifications

A notification should be formally withdrawn if a proposed activity is cancelled or not commenced within three months and a fresh notification issued where work is intended to be recommenced or rescheduled. This is a simple and obvious principle of community equity and will assist in reducing costs and inconvenience to local governments. Notification within five days of a decision to withdraw would be appropriate. The LGAQ opposes a non-regulatory treatment and would reasonably expect implementation of an industry code registered by ACMA.

D. Requirement to provide engineering certification

Anything short of engineering certification of new and enhanced infrastructure is viewed by this Association and its member local governments as inadequate in terms of public safety. This consideration is critical to high wind-shear areas (cyclone zones) and bushfire prone areas. It is reasonable that the carrier supplies certification with as-built drawings in a standard form.

Design of works intersecting with a road and its reserve in particular should be certified by an appropriately qualified engineer. We are aware of numerous instances of substandard installations in footpaths and on bridges impinging on public safety and structural integrity respectively of public assets. It is understood that third party rectification of substandard work constitutes a criminal offence under the *Criminal Code Act 1995* (Cth).

The LGAQ maintains the need for mandatory requirements under an industry code and defined time limits for lodgement of engineering certificates.

In addition, in the interests of public safety we would support a formal definition of "good engineering practice" encompassing national, state/ territory and local road management standards applying to works, with provision for sanctions.

E. Extending notification timeframes

Minimum notification periods are manifestly inadequate to permit adequate assessment. Minimum periods should be doubled as should the objection period for utilities, local governments and road authorities. Carriers are more than capable of providing enough notice of proposed works. These stipulations must be expressed in regulation.

2. Objections and protections

A. Clarifying the objections process for landowners

Awareness of the rights and processes for landowners could be greatly enhanced through public information and resource materials.

B. Allowing carriers to refer objections to the TIO

This proposal is acceptable.

C. Removal of redundant equipment

This is a perpetual problem for local governments. Equipment no longer in operation should be identified to the landowner (within a defined period) and removed by the responsible carrier as a requirement under an Industry Code, with regulatory penalties for non-compliance and the option for the landowner to remove and recover costs.

3. Facilitating services in line with community expectations and to support economic growth

A. Improve coverage outcomes through better infrastructure, where safe
B. Improve coverage outcomes through tower extensions
C. Allowing deployment on poles rather than on utilities (slim poles)
D. Encourage the co-location of facilities

Each of the proposals (except on co-location of facilities) seeks to increase the maximum permissible size of telecommunications equipment or introduce new LIFD categories. Local government opposed these initiatives in 2017 and maintains its opposition to attempts by carriers to expand discretion in ignoring planning assessment norms and community expectations.

The implementation of 5G will result in an explosion of telecommunications equipment on state and local government managed land and infrastructure. The cumulative effects of co-location and greater levels of co-location also raise safety considerations.

Small cell installations on roads should be excluded from LIFD. As it stands communities are dissatisfied with elements of the Low Impact Facilities Determination (LIFD) as an abuse of planning norms. Local governments on behalf of their constituents expect a far greater level of involvement in determining the eventual extent, form and location of this infrastructure.

What may be a “minor” LIFD change in a carrier’s view may be significant to residents and local authorities. The LGAQ and other jurisdiction Associations hold that facilities and related operational works impacting on a local government structure should be assessed/ approved by local government. Infrastructure installed on bridges, culverts, tunnels or in drainage infrastructure should not be treated as LIFD.

The argument that increasing the permissible height of infrastructure will reduce visual impact is disingenuous and is rejected. Similarly, LGAQ is not convinced that increasing antennae projection and satellite dish dimensions are low impact initiatives. Additional loading and wind shear that may arise will have not been considered where these replace smaller equivalents. Colour matching is an inadequate sop to these proposals.

Inclusion in the LIFD of 12 metre items such as slim poles/smart poles is rejected on a variety of grounds, not least the probability of interfering with future local government works, traffic line-of-sight and visual amenity.

A smart pole must support all potential uses including lighting, IoT and multi-carrier colocation. A pole may not be placed near similar public infrastructure but must be suitably engineered to replace that public infrastructure including lighting. Equipment cabinets/ ancillary fittings must be in pits or integrated into the pole.

Many 5G installations will be in the road reserve and relatively closely spaced posing important traffic impact and line-of-sight outcomes. The location/ placement of such infrastructure must be approved by the responsible road authority.

The LGAQ, subject to the primary safety condition, supports the principle of co-location with the proviso that facilities installed upon a local government structure should be assessed by the local government.

Conclusion

While LGAQ supports proposals in Sections 1 and 2 of the paper, our members will not support reform proposals of Section 3 expanding discretions of carriers to ignore broadly accepted community safety and amenity standards. Strategic plans and local planning schemes exist to prevent the type of outcomes proposed in Section 3. Self-regulation of this scale and scope is unacceptable to local government.

As a general principle, infrastructure or activities affecting local governments and local communities should be assessable under local instruments. While the community appreciates more efficient, more powerful telecommunications services it is not prepared to abrogate basic rights and privileges.

LGAQ
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