

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

18 July 2017

### Logo of organisation—if an organisation making this submission

Moreton Bay Regional Council

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### General comments

Thank you for the opportunity to make a submission on the proposed changes to the LIFD, the Tel Code and the Telecommunications Act.

As a local authority, Council is conscious of its obligation to balance the reasonable expectations of its community in terms of visual amenity against the need for the community to have ready access to a reliable and affordable form of communications infrastructure. This is an obligation that Council takes very seriously. Naturally, Carriers are concerned about unnecessary delays in the deployment of their infrastructure, and the need to obtain a development approval for what is often perceived by them to be a minor extension to an existing facility is often seen as an avoidable delay. However, Queensland planning legislation makes provision for some changes to be made to existing approvals through a substantially shortened approvals process, and even for very minor changes to be determined to be “substantially in accordance with” an existing approval, thereby negating the need for a further approval altogether. Council would encourage carriers to avail themselves of these alternative processes instead of seeking exemptions under the Minister’s “Determination” for what can be quite significant changes to an existing facility.

The application for the existing facility would have been approved on the basis of the drawings submitted with that application. The assessing authority would have exceeded its jurisdiction if it had considered the application on the basis of a higher tower and a potentially more extensive array. The telecommunications legislation should not put in place a mechanism whereby an exemption could result in a facility that, had the application been made for a facility of that final size and form, no reasonable assessing authority would have approved it.

## 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?

**Response** - *The current definition seems to be adequate, but there is no objection to inclusion of this note.*

#### 2. Local government heritage overlays

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

**Response** - *Just because a premises has "local heritage value", but not State or Commonwealth heritage value, does not negate its heritage significance. It is just an indication that its significance is aimed at addressing a value outside of that normally attributed to a State or Commonwealth heritage place. The proposed change should not be pursued further.*

#### 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?

**Response** - *The visual impacts of a "shroud" can be very different to those of the telecommunication facilities that they are intended to conceal/disguise. As such, "shrouds" should be treated as separate facilities. The term "shroud" also needs to be defined for clarity.*

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?

**Response** - *For a "shroud" to be classified as a "low-impact facility", some visual amenity criteria need to be set. At the very least, the "shroud" needs to be in keeping with the architectural style and scale of the building/structure to which it will be attached. Those size and scale aspects need to be agreed between the carrier and the planning authority for the area.*

#### 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)?

**Response** - *Visual impact is determined by a number of factors, with the size of the facility being just one factor. A dish mounted on a building roof or affixed to the wall of a building would be far more obtrusive than a ground mounted facility. Similarly, a dish which is so located that it can't be seen from a public area is likely to be of no consequence unless it is within a "residential" area. The only acceptable scenario for a 2.4m diameter dish as a "low-impact facility" should be limited to just a ground mounted facility. Provision could be made for other scenarios to be negotiated*

between the carrier and the planning authority for the area on a case by case basis. The current requirement for the facility to be “colour-matched to its background” is meaningless where the facility is elevated and the sky is the background, (the colour of the sky is constantly changing).

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)?

**Response** - See the response to 4.1 above. Those comments are equally relevant to a “rural” setting.

## 5. Maximum heights of antenna protrusions on buildings

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

**Response** - The discussion on this issue in the consultation paper seems to have been restricted to vertical protrusion. However, “protrusion” can be measured in any direction, and its visual impact will vary considerably depending on the direction of a protrusion. If “protrusion” in this context was intended to be restricted to just a vertical projection, it needs to be specifically worded that way. In terms of vertical protrusion, the extent of the facility’s visual impact is dependent upon its relative proximity to a potential viewer’s eye-line. The higher the building from which it protrudes, the higher a protrusion can be without being obtrusive. Building height can vary significantly within “residential”, “commercial” and “industrial” areas. No increase in the current “low-impact” threshold should be contemplated as, under the current regime, it must be considered on a worst case scenario, or most obtrusive placement basis. However, provision could be made for other scenarios to be negotiated between the carrier and the planning authority for the area on a case by case basis.

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?

**Response** - See the response to 5.1 above.

## 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?

**Response** - It is noted that this change is being promoted as a preferred alternative to panel or yagi antennas. However, panel and yagi antennas can be flush mounted to an existing structure and, in that context, would be less obtrusive than an array of protruding omnidirectional antennas. As an alternative to protruding panel and yagi antennas, the proposal is supported, (despite the fact that their allowable length is substantially more than that permitted for the panel and yagi antennas.

## 7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

**Response** - A “microcell installation” serves a specific function, while a “small radio-communications facility” can cover a number of different functions. As such, the reworded exemption could cover an array of “small radio-communications facilities” within the same area as that served by a single “microcell installation”, but with each facility covering a different function. An array is likely to be more obtrusive than a single facility having a similar size to each individual component of the array.

7.2 Are the proposed dimensions for these facilities appropriate?

**Response** - *While the size of the individual facilities may be appropriate when considered in isolation, the cumulative effect of an array may not be. However, if item 6 in Part 1 of the Schedule remains limited to “microcell installations”, our concern would be significantly reduced.*

## 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?

**Response** - *This should only be permitted if the equipment was originally installed with the consent of the building owner/occupier. Also, the scope of what constitutes a “residential use” in this context needs to be made clear, (many people would regard activities conducted in a backyard shed as part of their residential use of the premises.*

## 9. Tower extensions in commercial areas

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

**Response** - *The extent of visual intrusion associated with tower extensions is dependent upon the tower setting rather than just the “area” type. There are many options available to carriers in “commercial” areas that are less visually intrusive than towers and tower extensions. The existing tower would have been approved on the basis of the drawings submitted with the application. The assessing authority would have exceeded its jurisdiction if it had considered the application on the basis of a potential 5m extension and more extensive array. However, provision could be made for tower extensions in “commercial” areas to be negotiated between the carrier and the planning authority for the area on a case by case basis.*

## 10. Radiocommunications lens antennas

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

**Response** - *The name should appropriately reflect its appearance and function. A clear definition/description of the facility needs to be included for clarity.*

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

**Response** - *“Protrusion” can be measured in any direction, and its visual impact will vary considerably depending on the direction of a protrusion. If “protrusion” in this context was intended to be restricted to just a vertical projection, it needs to be specifically worded that way. In terms of vertical protrusion, the extent of the facility’s visual impact is dependent upon its relative proximity to a potential viewer’s eyeline. The higher the building/structure from which it protrudes, the higher a protrusion can be without being obtrusive. Building height can vary significantly within “residential”, “commercial” and “industrial” areas. A 5m horizontal protrusion for a facility having a 4m<sup>3</sup> “substantive volume” appears to be excessive in “residential” and “commercial” areas. However, provision could be made for this to be negotiated between the carrier and the planning authority for the area on a case by case basis.*

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

**Response** - *As indicated in the response to 10.2 above, this concept could be a concern in even an “industrial” area. However, provision could be made for “commercial” and “residential” areas to be considered on a case by case basis by negotiation between the carrier and the planning authority for the area.*

## 11. Cabinets for tower equipment

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

**Response** - *Unless replacing an existing larger facility, the height should be restricted to a maximum of 2m in a "residential" area in line with the maximum height for boundary fences not requiring a building approval.*

## 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?

**Response** - *No concern with this increase in solar panel surface area provided that they are so positioned as not to cause a reflection hazard to traffic or nearby residences.*

## 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?

**Response** - *See response to 13.2 below.*

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?

**Response** - *The critical issue is the length of time that practical access to properties is not available, rather than the maximum length of trench that is open at any time.*

## 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?

**Response** - *The effect of determining that certain activities and installations are "low-impact" facilities exempts them from planning laws, not from the requirement to gain approval from an infrastructure owner to use their infrastructure. As such, this proposed change serves no practical purpose.*

## 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?

**Response** - *The existing tower would have been approved on the basis of the drawings submitted with the application. The assessing authority would have exceeded its jurisdiction if it had considered the application on the basis of a potentially more extensive array. However, provision could be made for extensions to arrays in "commercial" areas to be negotiated between the carrier and the planning authority for the area on a case by case basis.*

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?

**Response** - *See response to 15.1 above.*

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

**Response** - *In terms of visual amenity, the concept of percentage increase should be abandoned and replaced with a "maximum deployment volume" which would vary according to the "area" concerned. Planning applications for the original facilities should be permitted to be assessed on the basis of that "maximum deployment volume" regardless of what was being proposed on the drawings. How "volume" is calculated needs to be clarified, (eg, is the volume of a street light just the volume of the luminaire or the volume of the entire installation?).*

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

**Response** - See response to 15.3 above.

## 16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

**Response** - No problem with these reference and terminology changes/corrections.

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

**Response** - Some additional definitions/descriptions need to be provided for critical terms used in the LIFD. Examples include “shroud”, “substantive volume”, “small radio-communications facility” and “facility volume”.

## 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?

**Response** - No issue with this change.

### 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?

**Response** - The actual change refers to when the notice is received rather than when it was issued. No issue with timing being measured from when the notice is received by the landowner/occupier.

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?

**Response** - 5 business days is not sufficient time for a large organisation with multiple stakeholders to respond. Also, in terms of objections that are sent by mail, 5 business days does not adequately acknowledge the standard Australia Post delivery times. “Last-minute stand-downs” should only occur if the works not are appropriately scheduled or Telecommunications Industry Ombudsman involvement is triggered, (carriers should never assume that objections will not occur), and a reduction in the length of the objection period will not overcome these.

### 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?

**Response** - No problem in principle with this proposed change.

### 20. Updates to references in the Tel Code

20.1 Are there any issues with the proposed changes?

**Response** - No problem with these reference and terminology changes/corrections.

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

Intentionally left blank.

## 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?

**Response** - *It has been accepted practice in most local government areas over the last couple of decades to not permit aerial reticulation of electricity cables except in a Rural setting or under other exceptional circumstances. This proposed change would be contrary to that established direction as well as reasonable community expectations.*

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

**Response** - *See response to 21.1 above.*

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

**Response** - *See response to 21.1 above.*

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?

**Response** - *The 5 business days allowed in the Tel Code for an objection to be made is not sufficient time for a large organisation with multiple stakeholders to respond. Also, in terms of objections that are sent by mail, it does not adequately acknowledge the standard Australia Post delivery times. "Last-minute stand-downs" should only occur if the works not are appropriately scheduled or Telecommunications Industry Ombudsman involvement is triggered, (carriers should never assume that objections will not occur), and a reduction in the length of the objection period will not overcome these.*

### 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?

**Response** - *No problem in principle subject to suitable criteria being established and applied.*

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?

**Response** - *Since these are mobile facilities, 5 business days for deployment and testing, and 2 business days for subsequent removal should be readily achievable. The time that the facility is to be operational would depend on the circumstances that warranted its deployment, and should be subject to negotiation with the relevant planning authority for the area. Other permissible conditions should be applied according to the constraints applying to the land on which the facility is to be deployed.*

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?

**Response** - *No particular preference, but there definitely needs to be clarity on the issue.*

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

**Response** - *See response to 22.2 above.*

## 23. Replacement mobile towers

### 23.1 Is the proposal reasonable?

**Response** - *The existing tower would have been approved on the basis of the drawings submitted with the application. The assessing authority would have exceeded its jurisdiction if it had considered the application on the basis of a potentially different site. For minor changes in position, planning authorities can deem the replacement facility to be “substantially in accordance with” the approval for the original facility, thereby negating the need for a new planning approval. For more significant changes, the planning laws within Queensland make provision for existing development approvals to be amended by making a “change application”. Carriers can avail themselves of that facility which is generally far less onerous than the original application process, but provides the necessary transparency reasonably expected by local communities.*

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

**Response** - *In many instances, a 20m offset of the facility could result in significant impacts that the facility that is being replaced avoided. Each proposal would need to be considered on its merits.*

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

**Response** - *A 12 week construction and fit-out period seems overly generous for a facility of this nature, given that the trigger for commencement of that period will be the commencement of onsite construction work. However, provision could be made for a longer maximum period to be negotiated between the carrier and the planning authority for the area on a case by case basis.*

## 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?

**Response** - *The existing tower would have been approved on the basis of the drawings submitted with the application. The assessing authority would have exceeded its jurisdiction if it had considered the application on the basis of a higher tower and a potentially more extensive array. Also, this proposal seems to be out of line with the changes that are proposed to be made to the LIFD which limits tower extensions to just 5m.*