

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

21/7/2017

Logo of organisation—if an organisation making this submission



Name and contact details of person/organisation making submission

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General comments

The Municipal Association of Victoria (MAV) welcomes the opportunity to make comments on the Department of Communications and the Arts Consultation Paper on **Possible amendments to telecommunications powers and immunities**, which was released on 9 June 2017.

The MAV is the umbrella body for Victoria's 79 councils and is a member of the Australian Local Government Association (ALGA). The MAV has encouraged Victorian Councils to make submissions on the Paper, and has supported the development of the ALGA response. This submission should be read in conjunction with any separate submissions received from state and territory associations as well as individual councils.

There are many issues raised in the Paper that are of significant concern to Councils, including:

1. The proposed reduction of notification period from 9 days to 5 days. We believe this timeframe is too short if sending of notification and response is relied on the Australian Postal Service and given the difficult process of co-ordinating a response from various Council departments.
2. The reclassification of bridges:

Council is sensitive to the need to have full control on what is happening on and around these structures. Also requiring the need to review any potential adverse effects placement of additional infrastructure may have on these bridges. When Council replaces a bridge, communications conduits and cabling need to be removed, these works need to be planned and programmed. It is an unreasonable cost-shift that the telecommunications companies receive a commercial benefit from the use of the Council asset, but then have an expectation that any interference to these cables, even for the sake of necessary maintenance on the bridge, leads to costs being incurred by the municipality. Council also have light design (e.g. pedestrian) bridges that are designed for specific loads, or flexibility or structural capacity. Additional loads or restrictions on these structures need to be considered before installation. Council should have a clear right of refusal or imposition of conditions for these bridges. Conduits and cables on bridges are very different to conduits and cables in the earth within a road reserve. The prospect of conduits and cabling needs to be considered by the bridge authority, taking into account the impact / implications on the whole of the structure. This is different to the road reserve where the earth supports and contains the cable and conduits. A 5 or 9 day period may not be enough time to gather the right expertise or records, to review a proposed telecom cable installation. A much longer time period needs to be allowed so that the road /bridge authority can gather its information and assess the effects of the proposal on its structure, age and state of degradation of the bridge being a significant concern.

In addition, the current process for installation of such infrastructure has no requirement for bridge engineering certification and therefore leaves council vulnerable to litigation and /or associated costs if the structural integrity, loading capacity or design life of the bridge is compromised. Furthermore, Councils are incurring excessively high costs, due to disconnection and re-connection fees charged by the telecommunication provider when structural works or replacement of a bridge is required. Councils object to any conduit / cable, low-impact or otherwise being attached to any bridge until such time as an Agreement is in place that indemnifies and shall continually indemnify Council against any liability, loss, damage or expense arising from the installation, operation or maintenance of the facility or any defect in the facility or in its installation to the extent that liability is caused by the installation, operation, maintenance of or defect in the facility.

Thus the concept of defining cable installations to bridges as Low Impact is not supported.

3. Implications for Council Planning

- The document “A Code of Practice for Telecommunications Facilities in Victoria” is an incorporated document in all planning schemes in Victoria. It lays out circumstances under which facilities do not need a planning permit for development, as well as guidance for responsible authorities on considering applications for planning permits. While the code makes clear that Commonwealth legislation takes precedence in any cases of inconsistency, it would be recommended to work with the Victorian Department of Environment, Land, Water and Planning to address any inconsistencies which emerge from this review.
- The proposed insertion of 7A into Section 2.5 of the Low-impact facilities determination is of concern. The rationale for this proposed change references heritage overlays applied across precincts, suburbs or localities. This reflects only one application of the Heritage Overlay in Victoria. While in some cases the Heritage Overlay is applied across a precinct, many councils also use the Heritage Overlay to identify individual properties or buildings of significant local heritage but which may not qualify for listing on state, national or world heritage lists. The proposed change would significantly reduce the ability of local

government to protect buildings and structures of local significance from adverse amenity impacts.

Recommendation:

Given the very significant concerns the local government sector has in relation to the proposals raised in the Consultation Paper, the MAV recommends that a Reference Group be established to consider the issues involved and the various stakeholder perspectives, and attempt to arrive at a consensus position. The most productive manner to achieve an agreed future direction on divisive issues is to engage in roundtable discussions rather than seek feedback and then make decisions behind closed doors. The public sector in Australia needs to become more collaborative if it is to regain community trust and respect and the establishment of a Reference Group would be one step in achieving that objective.

Responses (> see ALGA response for these individual items)

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>

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?
<response>
- 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>

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>
- 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>

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>

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>

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>

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

<response>

7.2 Are the proposed dimensions for these facilities appropriate?

<response>

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>

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>

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?

<response>

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

<response>

11. Cabinets for tower equipment

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

<response>

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>

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>

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>

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>

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>

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>

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

<response>

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

<response>

16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

<response>

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

<response>

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>

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>

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>

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>

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?

<response>

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>

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

<response>

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

<response>

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>

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>

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>

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

<response>

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

<response>

23. Replacement mobile towers

23.1 Is the proposal reasonable?

<response>

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

<response>

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

<response>

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>