

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

31 August 2017

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

N/A

### Name and contact details of person/organisation making submission

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### General comments

The Department of Infrastructure, Planning and Logistics has significant concerns regarding the proposed amendments to the telecommunications carriers' powers and immunities as they provide an incremental increase in telecommunications companies' existing rights to install infrastructure and a reduction in the rights of landowners, asset owners and community's rights to object or manage these works.

The current arrangements within the *Telecommunications Act* allow operators to undertake certain activities which are **deemed to be low impact by the Minister for Telecommunications**. This is contained in the Low-Impact Facilities Determination (LIFD) and does not take into account other uses for essential infrastructure and the subsequent requirements.

Transport facilities, power, water, gas and sewage are all essential infrastructure which have some exemption from planning requirements under Planning and Development legislation but still have considerable requirements to plan and work with other land owners and land holders to install facilities.

Considering that the intent is for low impact structures to be exempt from planning approval requirements, it is strongly suggested that the Department of Communications and Arts ensures that any changes to the Low Impact Facilities Determination does not unduly impact on the community, particularly residential, rural-residential areas and sensitive land uses.

Changes such as increasing satellite dish sizes, heights of antennas, tower extensions, replacement towers and inclusion of some types of towers could potentially be beyond the amenity impact expected under the Low Impact Facilities Determination.

Telecommunication operators have been exploiting the provisions of the Telecommunications Act, and in the Northern Territory Government experience there are many examples of this, as outlined below and in the attached table.

The telecommunications providers are installing infrastructure within road reserves which compromises road safety, a safe systems approach and can contribute to road crashes and fatal and serious injuries. The increase in telecommunications infrastructure size, which is often on road verges but within the clear zones, will increase the risk of crashes and injuries and often creates sight line issues.

The current provisions transfer costs to the Northern Territory Government for relocation and protection which have been exploited for financial gain. In the last few years, millions of dollars have been spent by the Northern Territory Government to relocate and protect telecommunication facilities which have been incorrectly installed or imposed on road enhancement. For example, Telstra has one approved contractor in the Northern Territory, who has a monopoly on the market and charges exorbitant prices. One example is a road project that required relocation of fibre optic cable. The one and only approved Telstra contractor quoted \$90,000 for the relocation. The Northern Territory Government obtained a quote from a contractor who was believed to be equally as competent which quoted \$5,000 for the same work.

Land Access Notices (LAAN) which are required by law are vague and misleading and do not have sufficient information to inform the land holder of the nature of the works. One recent LAAN from vision stream was for two and half years for all maintenance activities for the entire top end of the Northern Territory for the entire NBN network. This is unreasonable and beyond the expectation of the need for a LAAN.

There is very little planning by any of the telecommunication operators with over 99% of works being notified by LAAN and no other documentation or previous notice. The Department of Infrastructure, Planning and Logistics usually objects to over 90% of the LAANs submitted to the Department mainly due to lack of or non-relevant information.

Clause 11 of Schedule 3 requires all telecommunications operators to make reasonable attempts to enter into agreements with road authorities to manage issues. No operators have current agreements with the Department of Infrastructure, Planning and Logistics as the Northern Territory Government Road Authority. Only one operator (Telstra) has made any attempt to enter into an agreement with the Road Authority and that has not been accepted as the terms and conditions were unreasonable. NBN stated that they were too busy to enter into an agreement with the Department when this was requested prior to the NBN rollout.

The Telecommunications Code of Practice 1997 does not provide sufficient guidance on the limitations and requirements to exercise the extensive powers under the Act. This needs considerable overhaul in consultation with Austroads.

Many operators have resisted the requirement to obtain a permit to work in the road reserve and comply with location and engineering requirements, often citing *the Telecommunications Act* as the reason they

should not have to comply with any road authority requests to ensure the safety and efficiency of the road network. These are needed to ensure proper liability considerations and also that Work Zone Traffic Management is appropriately considered.

## 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?

The Department of Infrastructure, Planning and Logistics is aware of concerns raised by other road authorities and shares similar concerns.

The existing definition should not allow installation on Public Utility structures without the approval of the Public Utility and must meet the required standards of the Public Utility. This ensures the ongoing safety and efficiency of the transport network. It also ensures the core function of Public Utilities is not compromised. For example transport is there for the safe and efficient connection of people and freight.

All costs associated with telecommunications infrastructure should be borne by the telecommunications organisation owners of the telecommunications infrastructure.

#### 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?

Radio shrouds should be distinct facilities.

##### 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?

The distinct facilities should be compliant with planning authority principles and land owner requirements.

#### 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. This becomes a road safety hazard and should be referred to land owners / road authorities. For example, in cyclonic areas, who is liable if/when these pieces infrastructure become missiles? Who is liable if the infrastructure is not adequately installed and causes the death of a person?

There should be more clarity regarding the impacts on existing infrastructure.

- 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)?

The Department of Infrastructure, Planning and Logistics does not support installing the radiocommunications dishes anywhere without the permission of the Road Authority. These facilities would represent a road safety risk if installed in road reserves close to the road or road infrastructure.

## **5. Maximum heights of antenna protrusions on buildings**

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

This will increase safety issues for workers, particularly in regard to working at heights considerations. It will also make maintenance and operation more difficult. This may also be an issue near aerodrome and airport exclusion zones and should be subject to obstacle limitation provisions for the safe operation of the air craft.

There should also be mandatory community consultation about the visual amenity impacts.

- 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?

As per item 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?

As per item 5.1.

## **7. Radiocommunications facilities**

- 7.1 Does the proposed approach raise any issues?

Yes. Approval should be provided by the structure/land owner to ensure that it doesn't impact on existing use in any material way.

- 7.2 Are the proposed dimensions for these facilities appropriate?

The existing cabinet size is already an issue for road authorities and should be reduced and be subject to location at the landowners requirements.

## **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?

It should not be subject to an objection of entering, but should be subject to permission/approval of the land/building owner before entering.

## **9. Tower extensions in commercial areas**

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

This should be subject to planning and structural engineering considerations as well as permission/approval of the land/building owner. For example, the height extension needs to consider aerodromes/airports and obstacle limitation provisions for the safe operation of the air craft.

## **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?

As per item 9.1.

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

It should be located in low impact areas in keeping with the Planning Scheme and Land Use Planning documents appropriate to the site. For example in rural areas.

## **11. Cabinets for tower equipment**

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

The taller cabinet should not be installed in a road reserve as it has the potential to obscure sightlines and create road safety issues.

## **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, it would require permission of the land owner. It would also need to be assessed from a road safety and efficiency perspective as previously outlined. Maintenance of road reserves would also need to be considered, including compensation for the increased cost of road side maintenance.

## **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?

The trench length should be assessed for site conditions. It could be longer or shorter, depending on the site specific issues.

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?

This would only be supported if the open trench didn't restrict access to property. All other authorities are required to maintain property access as part of infrastructure development and this is a significant community concern, especially in commercial areas. The current eight hour limitation is no longer acceptable to the community.

## 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?

The following summarises the Department of Infrastructure, Planning and Logistics' position as to why the installation of cables and conduits on bridges is not considered to be a low impact activity.

- Bridge type and material used for construction:
  - **Timber** is usually an indication of older construction with limited remaining life. Drilling etc. will reduce structural capacity, these structures are generally older and replacement programs will require any service conduits to be relocated at that time. The Northern Territory does not have full timber bridges similar to other jurisdictions, but there may be some older structures with timber components.
  - **Steel** attachments will require corrosion protection (cathodic). Drilling through any steel bridge beams is discouraged and may also increase the risk of corrosion in aggressive coastal environments.
  - **Concrete** bridges are the most common bridge type in the Northern Territory. Concrete can be both reinforced and prestressing/posttensioned. The location of drilling points for anchors requires accurate positioning to avoid steel reinforcing or tensioning cables. Drilling into prestressed/posttensioned concrete is a specialist activity and would only be approved under exceptional circumstances due to the risk of damaging the structural integrity of the bridge. In many cases, conduits may be cast into bridge barriers during construction to allow installation of cables. There are usually a limited number of conduits of smaller diameter size limitations. The structural capacity of safety barriers dictates how many and how large conduits can be. Further structural interference with the barrier may impact on the structural integrity and therefore safety of the bridge. Access to the bridge to retrofit hangers etc. will require some form of scaffolding or truck mounted working platform – another OHS issue to be managed.
- In all above cases the following will be required:
  - Construction of junction/draw boxes at either end of the bridge to allow connection to the conduits, this will require excavation works to be undertaken which may be constrained due to embankment and the location of the bridge abutments.
  - Road authorities will require access to the bridge structure and approach roads to undertake routine maintenance to the structure and bearings where applicable, this may have an impact on conduit either cast into the bridge barrier or retrofitted.
  - In some cases, several types of utilities require access to the bridge structure to allow crossing e.g. gas, communications, power and water. This may compromise the minimum separation requirements for each service provider and limits the number of services on the bridge.
  - Traffic control which will require a full lane to be closed to traffic during the works. This will result in disruption to the travelling public for extended periods depending on the scope of work.

The formalisation of agreements between the road authority and service provider should be considered to ensure reasonable access, and to clearly define limits of liability where an incident occurs on the bridge. The agreement should also contain reference to notification periods prior to maintenance activities and any other relevant conditions required by the road authority with respect to the use of their asset by a third party.

## **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?

There should be no location on public utility infrastructure except with the expressed permission of the public utility.

- 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?

This would require engineering and road safety considerations which telecommunication operators are unable to consider appropriately.

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

As per item 15.2.

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

As per item 15.2.

## **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?

Telecommunications carriers' powers and responsibility are not transferable to another party. The Department of Infrastructure, Planning and Logistics will require that the telecommunications asset owner take responsibility for all risks the proposed changes would precipitate. The risk associated with any installation would be shared equally by the joint venture partners. As all joint ventures would have the rights they should be bound by the agreement and should sign.

### **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?

As very few LAANs are issued more than 10 days before work is expected to start, this provision would have little impact. It is not reasonable and the objection period needs to be extended to allow sufficient time to consider the impact of facilities.

It is suggested that the Department of Communications and Arts should ensure that the proposed changes to the objection periods successfully balance the landowners and occupiers needs as well as carriers' needs.

- 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?

With the current scope and breadth of the LAAN provided by most operators, 5 business days is unachievable to assess the potential impact on the road reserve and the operation. There are very few operators that provide more than 10 days notice on any project. The current objection period is nine business days under the Tel Code

## **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?

Given the current reticence of operators to negotiate and act reasonably, this provision should not be considered. The amendment would allow them to refer matters without attempting to resolve the issue.

## **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?

Not supported.

- 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?

As per previous comments.

- 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?

As per previous comments.

### **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?

As per previous comments.

- 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?

As per previous comments.



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?

As per previous comments.

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

As per previous comments.

### **23. Replacement mobile towers**

23.1 Is the proposal reasonable?

As per previous comments.

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

As per previous comments.

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

As per previous comments.

### **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?

As per previous comments.

<b>Project Description</b>	<b>Telecommunications scope of works</b>	<b>Costs (GST Ex.)</b>	<b>Contractor</b>
Stuart Temple Upgrade	Relocate fibre optic (no trace wire not in correct location for DBYD)	98923.71	Telstra/ Krisco
Roystonea Duplication	Relocate fibre optic	97354.10	Amcom/ Krisco
Temple Duplication	NBN pillar now at edge of carriageway	Not quoted	NBN
Vanderlin Duplication	<i>Details unavailable</i>	34368.20	Telstra
Central Arnhem Road, Goyder River Crossing Upgrade and Road Realignment	<i>Lower the Telstra fibre optic where the new road intersects at a perpendicular, including protection of the fibre and installation of pits.</i>	\$172,180.18	Krisco
Roper Highway, Roper River Crossing upgrades	<i>Lower and relocate the Telstra fibre optic where the new road alignment encroaches at a number of locations, including protection of the fibre and installation of pits.</i>	\$607,893.53	Krisco (Telstra only sought / received one quote from its Telstra Approved Subcontractor)
Roper Highway, Wilton River Crossing upgrades	<i>Relocate the Telstra fibre optic where the new road alignment encroaches at a number of locations, including protection of the fibre and installation of pits. Included a temporary fibre optic crossing the river until it could be fed through the new bridge conduit.</i>	\$512,997.48	Krisco (Telstra only sought / received one quote from its Telstra Approved Subcontractor)
Daly River Bridge	<i>Relocation of Telstra cable for roadworks on the approach to the new bridge on Daly River road.</i>	\$ 101,989.70	Service Stream
Darwin Business Park South – Construction of Dawson Street	<i>Lower cable at new intersection – Campion Road and Dawson Street.</i>	Quote was \$19,6149. Invoice was \$37,843.43	Service Stream

Project Description	Telecommunications scope of works	Costs (GST Ex.)	Contractor
	<p><i>Temple Terrace Palmerston NT. As part of a Pedestrian crossing upgrade, there was a requirement to lower a 10m section of OFC. All tenders except for one quoted ~\$43 000 to lower 10m of OFC. The exception quoted \$5 000. This discrepancy was not picked up during the tender assessment process. The contractor took it upon themselves to lower the OFC and not use a Telstra approved contractor. Telstra noticed the contractor lowering the OFC and notified the Department. When the Department queried the contractor as to why they did not use a Telstra approved contractor, their response was, "We wanted to highlight how much Govt. is being ripped off for relocating Telstra infrastructure. The contractor also stated they made a big profit on the \$5 000 quoted price." Telstra was asked by the Department if they were going to take action against the contractor and responded "No".</i></p>		
	<p><i>Roystonea 3rd Lane access to Territory Property Group lots corner of Roystonea &amp; Temple Terrace. There was a requirement to relocate a Telstra pit approx. (2m Length X 1.5m width X 2m depth) for a distance of 10m. It also required pulling and reinstalling various cables including NBN cables. Telstra quoted ~\$530 000 utilising its exclusive contractor. When Telstra was asked to provide a breakdown of costs, the response was that the information was commercial in confidence. The developer chose to redesign the intersection to avoid the Telstra pit.</i></p>		
Adelaide River Flood Plain Project	The Telstra fibre is in the formation and will need to be relocated.	\$400,000- \$500,000	Telstra
Mandorah Jetty Car park	Lowering Telstra / optic Cable due to inadequate cover provided by Telstra in the first place	Details to be advised	Details to be advised

<b>Project Description</b>	<b>Telecommunications scope of works</b>	<b>Costs (GST Ex.)</b>	<b>Contractor</b>
Leviathan Crossing	<p>The Optic fibre cable was in the vicinity of works and to note that under the creek rather than mandatory installing requirement of 0.4 to 1.1 m offset from the road boundary.</p> <p>The cable had a need to be shifted closer to Corridor boundary as per standard drawing.</p>	<p>\$154,957</p> <p>(initial quote was \$128,648.64)</p>	TELSTRA CORPORATION LIMITED
<p>Moyle floodplain</p> <p>Upgrade and Seal Ch 116 to 134km</p> <p>Location:</p> <p>Construction of New Intersection to Meripean community at Ch 116 430.</p>	<p>Inadequate cover provided by Telstra in the first place</p> <p>Supply, Deliver and place precast concrete protective cover slab over optic fibre cable to floor and batters of open unlined drain</p> <p>Excavate, lay and backfill single P100 Telstra conduit across access road as per instructions from Telstra via phone conference</p>	<p>\$14,409.09</p> <p>\$5,818.18</p>	<p>Allan King and Sons</p> <p>Allan King and Sons</p>
<p>Ringwood Road upgrade</p> <p>Ch 0 to 2.355km</p>	<p>Optic / Telstra Cables in the vicinity of Drain and insufficient cover .</p> <p>Stabilised Sand protection treatment provided by Department</p>	\$10,181.81	Aldebaran Contracting
Larapinta/Lovegrove roundabout		\$23,0000	Telstra