

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

The RSNL requires rail infrastructure managers (RIMs) to have procedures in place as part of their safety management system to ensure safety SFAIRP. These procedures provide for the communication and coordination of who is on the network and ensure relevant safety controls are in place. Third party accesses to the rail corridor without sufficient notification or outside of any reasonable direction given by the RIM, may impact the ability to ensure safety.

The Office of the National Rail Safety Regulator (ONRSR) is concerned that amendments to Schedule 3 of the *Telecommunications Act 1997* to increase the scope of carrier powers and immunities to enter land classified as the rail corridor or the 'danger zone' have the potential to present significant safety risks. Furthermore, the current classification of rail corridor land as 'low impact' under Schedule 3 is concerning.

Responses

The Australian Government seeks views on possible amendments to telecommunications carrier powers and immunities. In particular, the Government seeks views on:

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?

While proposed changes to the objection period from at least 5 days before the carrier proposes to engage in works to within 5 business days after the notice is received by the land owner or occupier appear reasonable, this relies on the presumption that all necessary information is available at the time of notification.

There is the potential that the 5 business day window prevents objection where there are legitimate safety concerns resulting from further information becoming available after the objection period has closed, for example in relation to proposed works within the rail corridor.



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To the Department of Communications and the Arts

ONRSR submission to possible amendments to telecommunications carrier powers and immunities

Thank you for the opportunity to provide a submission on the proposed amendments to the *Telecommunications (Low-impact Facilities) Determination 1997*, the *Telecommunications Code of Practice 1997* and potentially Schedule 3 to the *Telecommunications Act 1997*.

The Office of the National Rail Safety Regulator (ONRSR) is the responsible independent regulator for administering the Rail Safety National Law (RSNL).

The principle objective of ONRSR is to facilitate the safe operation of rail transport services across Australia. This is achieved through regulation of the rail industry in accordance with the RSNL, supporting regulations, policies and guidelines, and promotion of safety as a fundamental objective in the delivery of rail transport services. The RSNL places a duty on rail transport operators to ensure, so far as is reasonable practicable (SFAIRP), the safety of their railway operations. It also imposes a shared responsibility through general duties on all parties, rail safety workers, other persons involved in the rail industry, the regulator and the public to ensure the safety of railway operations.

I must highlight that significant safety issues exist with accessing the rail corridor and note that the current classification of rail corridor land as 'low impact' under Schedule 3 is concerning.

Furthermore, I am also concerned that proposed amendments to Schedule 3 of the *Telecommunications Act 1997* to increase the scope of carrier powers and immunities to enter land classified as the rail corridor or the 'danger zone' have the potential to present significant safety risks. In addition to this, the proposed amendment to change the objection periods in the *Telecommunications Code* to five business days from the receipt of a notice of some types of land entry activities potentially increases the safety risk as it may not be possible within a five day period to fully assess the proposed work, consult with stakeholders and put in place controls to ensure the safety risk is mitigated SFAIRP.

The RSNL requires rail infrastructure managers (RIMs) to have procedures in place as part of their safety management system to ensure safety SFAIRP. These procedures provide for the communication and coordination of who is on the network and ensure relevant safety controls are in place. I would like to draw your attention to section 199 of the RSNL (Power to require works to stop), which requires third parties to notify a rail infrastructure manager before carrying out any works near a railway that threaten, or are likely to threaten, the safety of the railway or the operational integrity of the railway.

Third party access to the rail corridor without sufficient notification or outside of any reasonable direction given by the (RIM), may impact the ability to ensure safety SFAIRP.

Please contact Julie Bullas on (08) 8406 1550 if you wish to discuss these comments further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sue McCarrey', written in a cursive style.

Sue McCarrey
Chief Executive, Office of the National Rail Safety Regulator