PROPERTY COUNCIL of Australia

PROSPERITY | JOBS | STRONG COMMUNITIES

3 August 2017

Department of Telecommunications and the Arts
GPO Box 2154
Canberra, ACT, 2601
powersandimmunities@communications.gov.au

Dear Sir/Madam

SUBMISSION: CONSULTATION ON POSSIBLE AMENDMENTS TO TELECOMMUNICATIONS CARRIER POWERS AND IMMUNITIES

The Property Council of Australia welcomes the opportunity to comment on the *Consultation on Possible Amendments to Telecommunications Carrier Powers and Immunities* and thanks the Department for providing an extension past the initial submission deadline.

The Property Council is the peak body for owners and investors in Australia's $670 billion property investment industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private. Our members span commercial, retail, industrial, residential and education sectors of the industry.

The Property Council and its members strongly object to any amendments that would see any increase in telecommunications carrier powers and immunities and therefore do not support the proposed changes.

Consultation with our members resulted in the unanimous view that the aggressive, dominant behaviour displayed by telecommunications carriers (carriers) in their dealings with building owners sees owners bearing unreasonable health and safety risks and costs due to carrier activities on their premises. The proposed changes would only see an escalation in this behaviour and result in further inefficient and unfair use of Australia's commercial buildings.

We strongly urge the Government to reject the proposed amendments and instead work collaboratively with industry stakeholders and take proactive steps to address the current issues faced. The Property Council would be happy to assist the Department in convening roundtable sessions to ensure the views of relevant industry stakeholders are heard.

We have worked with our members to provide an overview of the current situation and issues facing building owners in the attached submission, as well as providing answers to specific questions asked in the consultation documents. We will also separately provide to you some specific case studies showing the impacts of carrier activities across Australia's buildings, to be treated confidentially.

We look forward to working collaboratively with the Department and other industry stakeholders to address the issues raised in our submission, and would welcome the chance to meet with you and discuss the details of our submission further.

Yours sincerely

Glenn Byres
Chief of Policy and Housing

Current telecommunications carrier industry issues facing building owners

Over the last decade, carriers have taken an increasingly aggressive interpretation of the *Telecommunications Act 1997* (the Act) and the *Telecommunications Code of Practice 1997* with building owners in what many consider to be an abuse of market power. This behaviour can be attributed to a few key factors:

1. carriers have imposed on their staff very restrictive internal Key Performance Indicators (KPIs) that prevent even senior management from making commercial decisions. For example, we understand one carrier's agents must offer $1 as rental for Distributed Antenna Systems (DAS) 7 times before they are able to escalate the matter internally for approval to offer anything higher
2. building owners are being misled or are confused as to the contents of the Act and how it is to be administered. In many cases, owners will give up further pursuit of misunderstandings as it is too difficult and time consuming to deal with. Owners may choose to focus on their own assets, and engage specialist consultants without fully appreciating the broader implications for the industry,
3. the Act's provisions are being stretched, particularly by a handful of carriers (including most of the fibre carriers) by refusing to pay any compensation to building owners for space lost to the carrier's equipment. Even where commercial agreements are in place, members see a carrier terminate the agreements and only offer a fraction of passing rental, remaining in place "under their rights and powers under the Act". Unfortunately, the only avenue under the Act for building owners to settle these disputes is through costly federal court action. Members' experience has been that carriers simply refuse to pay, and know that if receivables become too high, the building owners will write them off to prevent being chastised by their firm.

Building owners are concerned that licensed carriers:

- do not provide sufficient notice or information before undertaking work within a building
- fail to observe critical safety standards, creating Work Health and Safety (WHS) and fire hazards
- impede building maintenance by inappropriately installing cables and other equipment within common areas such as ceiling spaces
- use space inefficiently and rarely remove redundant equipment from buildings, leading to clogged risers and tenant areas
- do not properly label equipment or document work making it difficult for owners to manage their buildings and rectify issues
- do not supervise or audit contractors who install equipment in buildings,
- do not compensate building owners for costs associated with:
    - providing space for installing equipment within their buildings
    - managing carrier equipment installed within their buildings.

Operational and financial impacts on commercial buildings

The concerns expressed by building owners are reflected in a number of significant operational and financial impacts on commercial building operation and financial performance. These include:

1. works carried out onsite lead to WHS and public safety risks which building owners are liable for but have no control over. Building owners are not provided drawings or sufficient information of the prospective impact on building infrastructure ahead of works and carriers try to enter sites with a minimum of information
2. individual carriers can install their facilities, mobile, network and customer access technology without any mandated requirement to make the site good when no longer required. MDF rooms and risers are now overcrowded due to the constant use of LAAN's to almost exclusively install, not remove any equipment
3. building owners are required to perform site access tasks and security management for free when they mostly derive no income for the use of their property or services. Owners are regularly required to educate and engage with new trades people every time a site visit is performed with no continuity or maintenance of site records
4. Due to carriers lobbying for the transfer of carrier's responsibilities, the responsibilities of cables in the risers now resides with the building owner, who will eventually have to remove any redundant cabling at their cost, which is significant. Considering the current rollout of the NBN, the mass of copper cabling taking up space in risers will be redundant
5. rental income for building owners is decreasing significantly due to carriers terminating commercial agreements as well as their "compensation agreements" whilst offering a fraction of passing rent or compensation
6. carriers are effectively allowed to set compensation rates far below industry norms available to the telecommunications industry and business specialising in carrier hosting. This is because the Act is vague as to what constitutes "compensation" and requires disputes to be managed via the Federal Court system with no low cost means of arbitration available unlike most other industry sectors. In many cases building owners do not challenge the validity of carrier actions, or they resort to engaging specialist consultants to pursue adequate compensation claims, adding to their financial burden
7. carriers pay nothing for finite resources such as MDF rooms and risers, as ambiguity in the Act results in misunderstandings and carriers believe payment is only required for out of pocket expenses. This may be in violation of the legislation in relation to compulsory acquisition (reference Clause 62 of Schedule 3 of the Act) without due compensation
8. carriers are lobbying to have mobile services designated "essential services" requiring even greater use of property resources when the DAS is essential to the mobile business, as distinct from that of the building owners. This would mean carriers will pay no rent for rooftops or DAS systems if they are successful, causing significant financial damage to building owners,
9. cost cutting measures by carriers results in their agents and contractors taking shortcuts both in access and installations processes, leaving firestopping measures unfulfilled and performing little if any make good of decommissioned cabling. There is also no practice of maintaining quality site records by carriers to ensure efficient access to site facilities and ability to minimise site visits.

Case Studies

The following describe cases provided by members that detail the concerns raised by building owners and non-compliant activities of carriers in commercial properties. Further information on specific sites will provided separately to the Department, to be treated confidentially.

Example 1: CBD High Rise Commercial Building with active property manager

- compliance with the requirements for site access and use of limited available space
- management of agreements is tedious as carrier is not used to complying with property rights or good practice
- additional resources must be deployed when the carrier is on site.
- **outcome:** result in loss of space, use of electricity, blocking of riser due to redundant cabling/equipment, cost to manage the activity.

Example 2: CBD mid-rise Commercial Office with active property manager

- access rights applied which deny the rights of property owner to manage the building
- continuous resistance and ignoring Land Access Activity Notices which are to outline of the activity that the carrier expects to be undertaking
- poor planning of activity and delays experienced for tenants that do not use the carrier for their provider and hence backhaul difficulties for non-incumbent carrier
- **outcome:** ongoing due diligence and persistence with requirements for reasonable quality workmanship but all at cost to building owner

Example 3: High Rise CBD Commercial Office with in-house management

- access requests to place facilities into building denying rights of property owner
- property owner must have added resources to manage the carrier to require financial compensation
- carrier uses Schedule 3 of Act to try and by-pass the Code of Practice.
- **outcome:** extensive examples of unsafe penetration of fire rated risers/walls/ceilings. Redundant cabling both within risers and false ceilings provides a risk to building safety.

Example 4: CBD Commercial High Rise with active on-site property manager

- access requests to place facilities into the building denying rights of property owners
- carrier insists on right for free use of building facilities
- property owner incurring excessive costs to manage the carrier and delays in receiving responses. This can lead to delays for tenant to occupy and, subject to individual agreements, rental income to be received.
- continuous push back on Land Access Activity Notices
- **outcome:** ongoing diligence and persistence with requirements for good practice resulting on aspects of the carrier work leaving the site unsafe and increased fire risk. Additional and penalty costs borne by owner.

Example 5: CBD Commercial High Rise with active site building manager

- carrier licensee is holding over once the licenses have expired and not entering into new licenses
- carrier will now only pay a nominal fee and refuses to enter into any further negotiation
- **outcome:** even if successful in obtaining a reasonable agreement the carrier falls back on the interpretation of the Act once that initial term has expired and thus ignoring the intent of the Code of Practice, resulting in no financial compensation to the building owner.

Recommendations for reform of the Act and industry practice

The Property Council and its members support the delivery of high quality telecommunications infrastructure and services that tenants of commercial buildings require. Building owners are increasingly concerned that the current regulatory framework unfairly disadvantages the sector and we believe reforms are required to address these concerns.

The following recommendations are provided for the Department's consideration:

1. a properly enforced code of access – The Australian Competition and Consumer Commission (ACCC) already administers a code governing carrier access to other carriers' transmission towers, transmission tower sites and underground facilities. A similar code should be developed governing carrier access to buildings and WHS practice. This would provide an operational framework for how carriers access and work on these sites
2. clear, regulated requirements for carriers to engage with building owners – carriers should be required to enter a commercial agreement with building owners before commencing work in a building. Section 372M of the Telecommunications Act outlines the requirement for a carrier to reach a commercial agreement with developers for the installation of telecommunications infrastructure in new developments. This section could be easily amended to apply to the installation in existing commercial buildings of equipment covered by Schedule 3 to the Telecommunications Act.

   Carriers should be required to act in good faith and negotiate proper license agreements and adhere to them. Cease practices such as "remaining under their powers under the Act" when they are unable to substantiate such claims
3. clarify the meaning and definition of "financial loss and damage" in Cl. 42 of Schedule 3 – this should include the ongoing operating costs of the space occupied by the carrier, the capital costs to construct the space, costs to replace disturbed firestopping materials, reimbursement for electrical consumption, and costs to read a meter and invoice a carrier, as well as security costs
4. Low-cost mediation – when resolution over lease terms cannot be reached, a neutral third party should be used to mediate and set the fees (such as a value) as is done with other forced occupation situations such as road widening and other infrastructure projects
5. revert the responsibility of cabling in risers back to the appropriate carriers – Including the costs of removal of redundant cabling. Building owners are bearing significant costs in the removal of cabling left behind and it is difficult to determine whether fibre cabling is active or not. This should prevent finite resources such as cable risers being full at a time when numerous carriers are trying to install their services in buildings to generate revenue
6. true "for construction" drawings in accordance with best engineering practices – these are largely not being provided by carriers without building owners taking the time to press the point, which many do not have the time or resource to do. Currently, details of installations provided contain just an email or a group of photos with lines on them,
7. carriers should be prevented from using their market powers to refuse to serve their mobile customers in instances such as DAS installations where millions of dollars are spent by building owners to allow carriers to generate income. This is no different to fibre carriers trying to charge building owners to install their fibre in a building.

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Submission response—Possible amendments to telecommunications powers and immunities

This submission can be published on the World Wide Web

Yes.

Date of submission

04 August 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

Please see attached letter for general comments.

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?

Co-location is a misnomer as carrier facilities are placed in many areas deemed available to the telecommunications industry. The number of service providers and their separate unshared

infrastructure is positioned within a site mostly for no cost to the individual carriers, with no requirement to make good or to install/operate efficiently. This has resulted in excessive space, power, and manpower [facility management and security and external advisory services] imposed with no reasonable means of review of compensation to the commercial building owners i.e. at their cost.

2. Local government heritage overlays

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

The proposed wording would effectively allow Low Impact Facilities on any land irrespective of the nature of the heritage listing in a local council planning instrument. This change is considered unreasonable due to its potential impact on heritage values of local environments. The amendment should be reworded to clarify that any place, building or item identified in a local government planning instrument relating to heritage conservation ratified under State Government Law is a register for the purpose of Subsection (7). Local government heritage overlays should have the same significance and rights as Commonwealth, State, or Territory overlays.

Heritage overlays, as the name implies, are in place to protect unique properties and maintain their intrinsic value to society and the present and future owners. While not in the business interest of the telecommunications industry, the greater good imbued by this overlay was included as a benefit for all Australians and not the secular business interests. The Federal Government should preserve this heritage for all Australians. This is a matter of serious concern and need of review with the industry at large.

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 must be constructed after permission and design approval is granted from land / building owners. All WHS requirements of the building owner and Insurance requirements must be met prior to any works.

Where these facilities have been agreed by property owners, consistent with the maintenance of site value and amenity and site functionality required by the building owner, shrouds may be permitted provided they do not impact the structural integrity of the original site or its engineering.

As an addendum to the actual radio facility additional structures need to be separately listed as a and managed as a separate entity.

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?

Where shrouds are agreed, they need to maintain the intended building owner site presentation and design. There can be no premise to have the telecommunications industry force owners into accepting site structures that may diminish a site value in the open market.

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)?

Permission and design approval must be obtained from building owners. All WHS and Insurance requirements of building owners must be complied with.

These facilities need to be sensitively placed and strictly comply with structural loadings and intended use of the original site and building code requirements. Where the site operational

amenity or operations may be reduced due to the mandated use of the site for these facilities, there must be a simple and structured means to ensure market derived compensation for this loss. This must be mandated to ensure reasoned understanding is used in the placement of such facilities when agreed.

As this is both an operational and engineering imposition to a building owner private area, any judgements need to be based on detailed engineering not service imperatives deemed by the TIO who has no mandate or understood capability in respect of site engineering and operations and only represent the customer or specific telecommunications service provider interests.

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)?

Permission and design approval must be obtained from building owners. All WHS and Insurance requirements of building owners must be complied with.

As stated above in 4.1, carriers must be accountable to not diminish site value without the cost of doing so and to make every endeavour in cooperation with the land owner to respect the integrity of the site for its originally intended use.

5. Maximum heights of antenna protrusions on buildings

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

No, any height increase is not acceptable unless agreed and is treated commercially in favour of the building owner as it is a long-term impost to their structure. Permission and design approval must be obtained from building owners. All WHS and Insurance requirements of building owners must be complied with.

Any height restriction or criteria must consider WHS of maintenance contractors attending to antenna as well as any other services on rooftop and also risks arising from extreme weather events. Any costs to manage and inform other contractors and arrange new SWMS should be paid by the carrier.

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?

The same issues exist in industrial and rural areas as in in other areas - any height restriction or criteria must be sensitive to the community and site owner's requirements not the carrier's.

WHS of maintenance contractors attending to antenna as well as any other services on rooftop and also risks arising from extreme weather events must be considered and any costs to manage and inform other contractors and arrange new SWMS should be paid by the carrier.

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?

The risk and effects of radio frequency radiation is an unknown at this point in time and building owners need to manage not only other contractors accessing antenna areas but also the potential for public safety in the future.

At present, there is little visibility/transparency if a carrier was to redirect antenna range and how this flows on to contractors accessing area. We recommend any future design/approval locks in how this change is managed. Any costs to manage and inform other contractors and arrange new SWMS should be paid by the carrier.

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

The same building/land owners' approvals and WHS/maintenance requirements should apply to this facility to protect the safety and health of contractors and general public.

Any easing of requirements for telecommunications services providers will only increase the present aggressive behaviour from carriers and further remove the rights of the community and particularly the commercial property sector.

7.2 Are the proposed dimensions for these facilities appropriate?

No, unless the telecommunications industry is operating in a legal framework that enshrines the rights of the property owner in terms of rightful compensation due to diminished amenity or site value.

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?

The entire provision has always been considered unreasonable for it allows carriers to install any type or volume of equipment inside a building as a low impact where potential use of Land Access notice could be used. Extending this provision further to non-residential structures in residential areas only compounds this issue. The provision needs a thorough review to place some limits on the type and volume of equipment that can be installed in any land use area.

At a minimum, permission must be obtained from building owners and all WHS requirements including inductions and permit must be completed prior to entering buildings. Any changes to existing structures must consider WHS of maintenance contractors installing/attending to facilities as well as any other services on rooftop and also risks arising from extreme weather events. Any costs to manage and inform other contractors and arrange new SWMS should be paid by the carrier

9. Tower extensions in commercial areas

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

The proposed amendment is considered to potentially result in poor visual outcomes by allowing the increase in height of freestanding structures that will commonly interface with residential areas. Proper assessment of such impact should be allowed for under a planning process and building owners should have the ability to formally approve such height increases which they would potentially lose if the activity becomes Low Impact.

At a minimum, permission and design approval must be obtained from building owners. All WHS and Insurance requirements of building owners must be complied with. There are considerations related to visual impairment, nature of the base structure and the building owner's future commercial intensions i.e. structural site change and height adjustments. Carriers should not have the right to prevent site development or to insist on building owners paying for their network infrastructure through use of property, structure or delaying development of a building or site due to use by a carrier's radio coverage facilities or utilities.

While carriers have specific needs in the running their businesses, the community and their investments, including commercial buildings need to be protected from unreasonable behaviour and commercial loss due to service providers, as occurs at present. The present laws fall far short of being reasonable in commercial terms with massive loss to building owners and the community.

10. Radiocommunications lens antennas

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

Whatever name is adopted, it must make sense to the parties impacted by their placement on their property or building. Commercial building owners are not versed in telecommunications jargon and may not understand this field of technology or impact on their buildings or amenity.

Any name given should be defined in plain language to people that may be impacted by it or need to be properly informed.

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

No, unless agreed collaboratively, is fully understood in terms of impact on the building owner and community, and has a sound commercial base in terms of compensation. Permission and design approval must be obtained from building owners and all WHS and Insurance requirements of building owners must be complied with.

It is considered that the volume allowance of 4 cubic metres is excessive along with the protrusion limit. These provisions could result in poor visual outcomes particularly if the antennas are allowed as Low Impact in Residential and commercial areas. Structural impact and weight impact on the existing structure must be ascertained and discussed with the building owner and any rectifications / make good must be at the carrier's cost.

Any changes to existing structures must consider WHS of maintenance contractors installing/attending to facilities as well as any other services on rooftop and also risks arising from extreme weather events. Any costs to manage and inform other contractors and arrange new SWMS should be paid by the carrier.

Future development of the site must also be unaffected thereby protecting the initial land owner rights.

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

Radiation is a growing community concern along with the impact of RF noise in the community that needs to be better managed based on what has occurred due to interference sources on all manner of radio reception.

These should only be allowed if considered on a case by case basis and require land/building owner approval.

11. Cabinets for tower equipment

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

Permission and design approval must be obtained from building owners. All WHS and Insurance requirements of building owners must be complied with.

Structural Impact and weight impact on the existing structure must be ascertained and discussed with the building owner and any rectifications / make good must be at the carrier's cost.

Any changes to existing structures must consider WHS of maintenance contractors installing/attending to facilities as well as any other services on rooftop and also risks arising from extreme weather events. Any costs to manage and inform other contractors and arrange new SWMS should be paid by the carrier.

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?

The provisions would allow carriers to seek further land area for solar panels under low impact provisions where LAAN could be utilised without formal landowner approval. Permission and design approval must be obtained from building owners. All WHS and Insurance requirements of building owners must be complied with.

Structural Impact and weight impact on the existing structure must be ascertained and discussed with the building owner and any rectifications / make good must be at the carrier's cost.

Any changes to existing structures must consider WHS of maintenance contractors installing/attending to facilities as well as any other services on rooftop and also risks arising from extreme weather events. Any costs to manage and inform other contractors and arrange new SWMS should be paid by the carrier.

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?

A 200m open trench in residential area is considered excessive and presents significant WHS issues that need to be considered. Safety of the public must be managed at all times and any access to property must not be restricted.

This is very dependent on the area and so should be treated on a case by case basis. Brownfield sites are becoming higher in population density with both vehicle and foot traffic and any opening needs to properly consider WHS and access amenity of the local residences

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?

Provided 13.1 is adequately addressed and provided safety of the public is managed at all times and any access to property is not restricted.

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?

Structural and Risk Assessments should be completed in conjunction with the owner before installation of cable and conduit on bridges.

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?

The original regulatory control was put in place to encourage colocation but recognised the need for some form of control to protect against sites becoming visually cluttered. This is not well managed now under the prevailing low impact laws and so any lessening of co-location should only be considered if the present legislation framework properly considers the building owner and their ability to manage space so take up by these additional facilities.

This is certainly not the case at present and with the number of carrier service licensees, space is an issue that is presently unmanageable with significant commercial loss to building owners and no

management of redundant infrastructure is also a serious concern unless mandated to be managed by the service providers.

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?

Yes, if the volume increase of 50% occurs within a commercial property, this can only be viewed as a further land grab and not considering efficient use of space. Considering the current practice of no management of obsolescence, and no co-sharing of the carrier infrastructure, this should not be allowed.

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

Permission and design approval must be obtained from building owners. All WHS and Insurance requirements of building owners must be complied with.

Structural Impact and weight impact on the existing structure must be ascertained and discussed with the building owner and any rectifications / make good must be at the carrier's cost.

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

The current LIFD is inadequate as it only provides rights to carriers. The mandated compensation is ineffective and misused, with mediation costly to property owners who are seriously disadvantaged by the aggressive behaviour of the carriers.

16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

The changes appear to refer to environmental significance rather than environmental legislation. Clarity is required though it appears no changes are proposed to relax environmental controls and what triggers an Area of Environmental Significance.

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?

The proposed change is considered totally unreasonable for landowners/occupiers have the right to know for what entity an activity is being performed for. The Joint Venture arrangements for the mobile operators commonly involve separately owned equipment installed and serviced by the relevant carrier entities. The proposed amendments to the Code go beyond simply allowing for only one signatory and impinges of the fundamental concept of disclosure in respect to who is performing works.

When one carrier occupies a site for a given purpose and a detailed agreement has been satisfied for both parties based on that deed, it is unacceptable to simply allow any increase in facilities either by the licensee or for another carrier without due consideration of the land, structure on the land or site owner/s.

This impacts commercial and local occupancy considerations along with site access demands and therefore site management costs and future usage requirements of the building owners. This is

presently very poorly managed and needs to be properly understood in terms of impact and cost and the LIFT amended.

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?

No. As it stands the period for landowners/occupiers to consider a notice and prepare an objection is already very narrow and the proposed amendments will ensure any notice must be responded to within 5 business days of receipt. In many cases the issues involved in assessing the likely impact of a proposed activity are complex and landowners rightfully need to be afforded sufficient time.

It needs to be noted that carriers as a widespread practice do not provide legitimate commencement dates but rather provide a very wide window for activities to occur in. This practice is aimed at minimising the amount of time that an objection could be lodged in.

Every building owner is required to manage their sites, indeed are accountable by law to ensure their sites are safe and they need to ensure a proposed carrier activity is well considered. Building owners are now dealing with regular threats and security breaches and it is unacceptable to allow anyone to service facilities at any time within an open-ended access period.

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?

Land owners and occupiers should have, at a minimum, the same period to object as the carriers must provide notice. Particularly in respect to new low impact facilities installations, the minimum notification and response period should without question be increased to allow for review and prepare for such works. A 25-day notification period with the ability to formally lodge an objection up to 15 days from receipt is considered more reasonable in meeting the objectives of all parties.

At present, building owners are left not understanding when an activity is to occur. This needs to be considered in revised legislation or amending the present LIFD as risers are used for all manner of site communications infrastructure needs i.e. fire, access, security, fluid controls, MATV, mobile, Wi-Fi and tenant privately owned cabling and facilities [block cabling], all needing space, site access and site records management.

There is a lack of compensation to building owners and a lack of on-site expertise available to building owners to fully understand what is proposed by the range of carriers seeking access at any one time. This requires management and this costs with the majority of time consumed being related to carriers.

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?

There are no underlying rights for building owners who have only one recourse via the Federal Court system as the high upfront costs to proceed often deter building owners from taking further action.

The proposed amendments are alarming for it would appear to be an attempt to circumvent the objection process where the parties are required to meaningfully engage and afforded reasonable time periods in an attempt to resolve the objection. The proposed changes could readily allow the

carrier to condense the consultation and resolution period and simply have the TIO decide on the matter.

This approach needs better low-cost mediation to ensure all parties obtain a reasonable and sensible outcome that has a sound commercial base that should be required of any industry sector. The present LIFD needs amendment to enable proper low cost and speedy engineering based on a sensible review process.

20. Updates to references in the Tel Code

20.1 Are there any issues with the proposed changes?

The present descriptive references representing "Low Impact Facilities" do not adequately detail the facilities and their impact. They are based on "land" and not developed sites where building codes and amenity have been defined by the owners. No separate business entity should be given a right to install facilities knowingly crowding a presently overloaded utility area and not comply with mandated infrastructure standards as occurs at present.

The building owner has no control in common law under the present LIFD and with the number of telecommunications suppliers able to simply advise of yet another facility install, exclusive to their operations and with no accountability or impact on a site, this is untenable to building owners.

This needs to be thoughtfully considered and then managed in a collaborative manner with the commercial property industry.

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

Refer to letter with additional recommendations.

Costs related to sites need to be mandated so that expertise becomes available to commercial property owners to manage the install and removal of telecommunications infrastructure, and that accurate site record are maintained. Most carriers are not fully aware of what they have installed within a site in order to properly plan new client needs and to maintain present services and to minimise new infrastructure.

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?

The introduction of this provision would allow NBN to install overhead power on property against the wishes of a landowner or occupier who may be seeking underground power and/or a specific alignment. The need for the amendment is considered questionable and if considered there would certainly need to be limitations on the length of the power run.

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

No

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

May be suitable dependent on property limitations such as lightning protection requirements and should be reviewed by property owner or representative.

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?

Should be in line with the 30-day objection response timeframe.

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?

The proposed amendments would allow carriers to readily install such facilities without planning approval and formal landowner approval by way of LAAN. If introduced controls certainly need to be put in place in respect to how long the facilities can remain in place and their ground area.

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?

No, as the change in mobile towers will potentially impact development, future usage or planning. The concern with this change is that such works could potentially occur without the formal approval of the landowner/occupier in accordance with a LAAN

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

No, any change in towers should require consultation with owners or owners' representatives as could impact development, future usage, planning and commercial arrangements.

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

Yes, as long as there is coordination with operational requirements of owners

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?

A 10m increase to a freestanding structure is considered significant and should be subject to planning assessment and landowner approval processes. The intent of the change is questionable for it would be rare for an existing pole or tower to be able to be extended 10m structurally unless it was fully replaced or significantly strengthened.

Any height extensions need to be in consultation with the Owners as changes may be in breach of Development Agreements and, or impact shade, structure, electromagnetic energy, and lightning protection.