

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

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Logo of organisation—if an organisation making this submission



Name and contact details of person/organisation making submission

Trevor Gross
Communications Engineering Manager
Network and Infrastructure Division
Public Transport Authority of Western Australia
tel: (08) 9326 2000
email: trevor.gross@pta.wa.gov.au

General comments

The PTA thanks the Department of Communications and the Arts for the opportunity to respond to the consultation paper titled “Possible amendments to telecommunications carrier powers and immunities”.

The PTA acknowledges the importance of telecommunications in the modern world, and works to provide it’s customers with the best experience possible. In recognition of this, the PTA works with carriers in good faith to improve access and telecommunications coverage across its network.

PTA is a State Government authority responsible for operating rail, bus and ferry public transport services across Western Australia. PTA is also responsible for managing and maintaining considerable infrastructure assets for these services, including railway reserves and railway stations across the Perth and Peel regions.

These reserves, stations and associated infrastructure are inherently dangerous places. The railway is electrified to 25kV and trains travel up to 130km/hr. PTA is committed to ensuring our railway operations and infrastructure are managed safely and in accordance with our obligations under a range of legislation

and regulation including the Public Transport Authority Act 2003, Government Railway Act 1904 (last amended 2015) and the Rail Safety National Law (WA) Act 2015.

In order to comply with legislation, PTA has implemented a number of essential measures to be undertaken when works are proposed to be conducted on or near rail corridors, whether that work is to be performed by PTA personnel or by external parties. These measures include:

- (a) **(Qualifications)** As required by legislation, PTA requires that all workers must be suitably qualified and be in possession of a Railway Industry Worker Card with suitable endorsements for the work being performed.
- (b) **(Rail Safety Management Plan)** A Rail Safety management Plan covering all aspects of all activities must be considered and approved by PTA before works are performed.
- (c) **(Assessment and supervision)** Works on rail corridor must be assessed prior to commencement by a qualified protection officer. Works which are approved may also require the mandatory deployment of a protection officer to supervise all activities.
- (d) **(PTA's safety standards)** Contractors and other entities' safety management systems must comply with PTA's safety standards.

To ensure legislative obligations are met, a suitable time is required for those proposing to carry out work and for PTA to review, amend if necessary and approve the proposed work. In some cases this review will take several weeks. Some activities, such as if the overhead 25kV overhead power must be turned off during the work, require 12 weeks notice. This can also extend to some bus facilities as it is common for rail and bus facilities to be collocated and safety aspects of one can impact on the other.

PTA has for some time been concerned that the Telecommunications Act, and other telecommunications industry documentation such as the Telecommunications Code of Practice and Low Impact Facility Determination does not provide adequate protection for the interests of railway organisations such as PTA.

As a public entity, PTA cannot favour any organisation over another. Unfortunately however, it has been the recent experience of the PTA that some carriers use the LIFD to avoid having to enter an agreement with the PTA, and hence gain a commercial advantage over other carriers. PTA would suggest that if a separate agreement cannot be made, carriers seeking to co-locate should be subject to the same relevant terms and conditions (e.g. financial contributions, OH&S, etc) for all carriers in that location.

The Rail Safety (National) Law WA 2015 and the associated regulations are based on a national model, and PTA is subject to oversight by the Office of National Rail Safety Regulator. Despite the apparent interpretation by some carriers, the LIFD does not give them immunity from these and similar OH&S state laws.

In view of the concerns outlined above, PTA considers that:

1. The scope of low-impact facilities should not be expanded. In fact, given the inherently dangerous nature of railway operations, PTA considers that no telecommunications facilities should be classified as low-impact facilities if they are conducted on rail land.
2. Given the meaning of "maintenance" in clause 7(3) in Schedule 3 of the *Telecommunications Act 1997 (Cth)*, carriers' maintenance powers under Schedule 3 should not apply to telecommunications facilities on rail corridor land.

3. If points (1) and (2) above are not possible, the compensation regime under the *Telecommunications Act 1997* (Cth) should be amended so that, in addition to the current requirement for compensation in cases of financial loss or damage, carriers are required to reimburse for costs reasonably incurred as a result of the installation and maintenance of telecommunications facilities.

In relation to the LIFD definition of Public Utility and Public Utility Structure, PTA considers that PTA is such a Public Utility and that all railway and bus infrastructure, including below ground infrastructure is subject to the legislative requirements of railways.

Schedule 3 of the Telecommunications Act obliges carriers to:

A carrier must, in connection with carrying out an activity covered by Division 2, 3 or 4, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and*
- (b) to protect the safety of persons and property; and*
- (c) to ensure that the activity interferes as little as practicable with:*
 - (i) the operations of a public utility; and*
 - (ii) public roads and paths; and*
 - (iii) the movement of traffic; and*
 - (iv) the use of land; and*
- (d) to protect the environment.*

Further that ...*A carrier must make reasonable efforts to enter into an agreement with a public utility that makes provision for the manner in which the carrier will engage in an activity...*

PTA is not convinced carriers have conducted their business in accordance with these requirements for the current legislative requirements and have concerns that an extension to these powers and immunities will further jeopardise PTA's ability to comply with its obligations and be an untenable situation.

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 LIFD makes specific mention of co-located facilities on a public utility structure. PTA can be considered a Public Utility and any powers or immunities which are proposed to be conferred upon carriers should not be to the exclusion of PTA's obligations to comply with the applicable railway safety legislation, other legislation and regulations.

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?
No comment
- 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?
No comment

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)?
PTA has concerns that a dish of this size would compromise the structural integrity of any PTA antenna support structure and also inhibit PTA's future services if it is proposed to install the dish on PTA antenna support structures. In this event the application to install the dish would be rejected.
- 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)?
Same comment as for 4.1.

5. Maximum heights of antenna protrusions on buildings

- 5.1 Is a 5 metre protrusion height acceptable, or is there a more appropriate height?
In general, railway buildings are low in height and the current 3 metre protrusion does not offer carriers much benefit so such cases are non-existent in PTA. An extension to 5 metres would present an unacceptable risk to the structural integrity and appearance of the building and would be rejected. The proposal is therefore not supported by PTA.
- 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?
Same comment as for 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?
No comment.

7. Radiocommunications facilities

- 7.1 Does the proposed approach raise any issues?
PTA would have concerns, and likely reject the proposal, if a carrier was seeking to add the larger "radiocommunications facility" to a railway structure which would jeopardise the structural integrity, present an unacceptable safety risk or inhibit transport operations.

7.2 Are the proposed dimensions for these facilities appropriate?

Same comment as for 7.1.

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?

PTA does not support this proposal if it the proposal is intended to include transport facilities in residential areas. As per the general comments above, transport facilities must be considered differently to non transport facilities given the legislative obligations on the transport organisation.

9. Tower extensions in commercial areas

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

PTA does not support this proposal if it the proposal is intended to include transport facilities in commercial areas. As per the general comments above, transport facilities must be considered differently to non transport facilities given the legislative obligations on the transport organisation.

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?

PTA has concerns that an antenna of this size would compromise the structural integrity of any PTA antennas support structure and also inhibit PTA's future services if it is proposed to install the antenna on PTA antenna support structures. In this event the application to install the dish would be rejected.

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

The comment in 10.2 applies in all areas.

11. Cabinets for tower equipment

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

PTA could accept this proposal if it is intended to locate the cabinet adjacent to an existing carrier structure on transport land and the carrier can demonstrate the new cabinet can fit within the space allocated to the carrier. Also, as power is often sourced from the transport power supply, the carrier would have to demonstrate the extra load would not compromise the transport needs, including future growth.

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?

No comment.

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?

PTA could accept this if the carrier can demonstrate to PTA's satisfaction it will not present an unacceptable risk to transport operations and maintenance.

PTA will not accept trenches left open for more than absolutely necessary if the conduits are installed under, or in close parallel to, a railway. Undertrack crossings are not to be considered low impact as the risk of unsettling the track and its formation is high. Underbores (ie trenchless) are preferred and may even be mandated by some railways. Open trenches would only be approved if there is no other practical solution and certainly must be reinstated to PTA's satisfaction before the first train runs over it.

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?

PTA considers 200 metres to be an acceptable maximum, subject to the comments in 13.1.

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?

PTA does not consider that installation of cable and conduit on or under bridges should be permitted as a low-impact facility. This is due to the following:

- (a) the high risk that the railway environment presents;
- (b) the logistical challenges involved to integrate works within the rail corridor;
- (c) the requirement for:
 - (i) electrical isolations and track closures to be put in place;
 - (ii) anyone working on rail corridor to comply with the *Rail Safety National Law (WA) Act 2017* and to be appropriately attired and suitably qualified; and
 - (iii) a protection officer to be present at all times;
- (d) concerns around the loading impacts to the structure as a result of cable infrastructure; and
- (e) concerns around other detrimental impacts to the structure and potential hazards. For example:
 - (i) drilling holes in structures can have detrimental impacts if holes are unsealed, as this may allow the ingress of water into concrete which could lead to the premature failure of steel reinforcement; and
 - (ii) laying cables and/or conduits in waterways, especially through drains, is hazardous, as they can be damaged by machinery when drains are being cleaned.

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?

PTA does not consider this proposal to be acceptable if the proposal is intended to apply to transport public utility structures. For the many reasons stated in this collective response, transport infrastructure cannot be lumped with the public utility examples quoted such as road signs, street lamps and water tanks.

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?

PTA cannot accept this proposal if it is intended to apply to transport public utility infrastructure.

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

No comment.

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

No comment.

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?

Whether a nominated lead carrier, legal JV or other arrangement is proposed, PTA expects to sign individual agreements with each carrier before access is granted to PTA land.

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?

PTA considers that the existing time allowance, based on 10 working days before work is due to start, is insufficient for PTA to carry out the necessary due diligence to meet its legal and regulatory obligations.

Notwithstanding that PTA does not consider any work proposed to be done on railway property as low impact and therefore these notice and objection times are not applicable, changing the period to be within 10 business days of the notice being served will do nothing to improve PTA's opportunity to carry out the due diligence.

Having such short objection times leaves PTA with little option but to object to every LAAN to provide more time to carry out the due diligence.

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?

No. In addition to the response to 18.1, the Australian Railway industry is such that the "occupier" of the railway is often not the "owner" and reasonable time must be allowed for the proposal to reach the railway body which is legally permitted to grant access.

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?

Yes, PTA does not support this proposal because it would provide carriers with an unreasonable method of circumventing due process, consultation and resolution.

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?

PTA does not consider it reasonable for poles in rural areas for telecommunications and electricity cabling for telecommunications networks to be low-impact facilities. This is because, in PTA's experience, most of these items are located on or near rail corridor and PTA has concerns around the impact to train operations as well as access to sites.

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

PTA does not consider these poles to be low impact, whether in rural areas or otherwise.

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

PTA has read this to mean only cabling being strung on these poles and the poles will not be used to support antennas or other radio equipment.

Nevertheless, in city areas where railways are electrified, there are severe restrictions on aerial cables given that the electrified overhead wiring, sometimes up to 25kV, may only be 5 metres above the ground. It is unlikely that PTA would approve such an installation in these circumstances.

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?

Notwithstanding that PTA is unlikely to approve such an installation in an electrified area, and further to comments made under 18.1 and 18.2, the existing notification and objection process is considered insufficient. The consultation time should be as long as is required for PTA to conduct its due diligence.

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?

PTA does not have any comment to make on state and territory planning approvals, but it would not be practical to have such installations on railway property. The temporary nature of these installations usually means the deployment is at very short notice which would not give time for PTA to access the proposed installation.

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?

No comment.

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

No comment.

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

No comment.

23. Replacement mobile towers

23.1 Is the proposal reasonable?

PTA has no objections to this proposal provided it is a like for like replacement and PTA is given the necessary time to conduct due diligence at the proposed new location within 20 metres. If the new tower is different, then PTA considers this a new installation and would treat this as a new installation.

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

Realistically, 20 metres would be a minimum if it is a substantial tower. PTA would be open to a larger distance if the carrier can justify the larger distance and PTA is given the opportunity to conduct due diligence.

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

Yes.

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?

PTA cannot see how a tower could be extended by 10 metres unless the original tower was built with this capability. PTA would expect the carrier to divulge during the initial consultation before the first installation of the tower that it had the capability to be extended and whether the carrier intends to do such an extension in the future. This would be part of PTA's consideration to grant approval for the first installation.

10 metres is a substantial extension and would result in a very large tower. It is unlikely PTA would, in the first instance, approve such a large installation on railway property within close proximity to the track.