Department of Natural Resources and Mines views on the Department of Communications and the Arts consultation paper *Possible amendments to telecommunications carrier powers and immunities* (June 2017)

Background

Around 70 percent of Queensland is state land. State land is generally land that is not freehold and is managed or administered by the Queensland Government for the benefit of all Queenslanders. The majority of this land is administered under the *Land Act 1994* (the Land Act) by the Department of Natural Resources and Mines (DNRM).

The bulk of the state land portfolio is subject to leases, licenses and permits.

There are currently around 700 leases and permits that are used for communication purposes under the Land Act. They account for about 3.5 percent of leases, licences and permits issued.

DNRM's policy *Leasing land for Telecommunication Carriers, including for aerial pole routes PUX/952/053* sets out requirements for dealing with proposals by carriers to undertake telecommunication activities on state land administered under the Land Act. Under certain circumstances, telecommunication carriers are required to obtain a suitable tenure for their facilities (generally, a term lease for a maximum of 30 years).

Current operational policy *Secondary use of Trust land under the Land Act PUX/901/209 SLM/2013/493* encourages development of telecommunication facilities on community purpose reserves that demonstrate a direct public benefit to the surrounding community and the siting of the facility is required for technical or planning reasons.

Implications of proposed amendments to telecommunications carrier powers and immunities to state land managed under the Land Act

Considering the broad description of designated telecommunications areas— particularly 'commercial area', DNRM is concerned about the possible implications for state land management and administration, from proposed amendments which significantly increase the size of existing facilities, allow new types of facilities, and allow some types of facilities in new areas.

There are currently over 26,000 reserves in Queensland that dedicated under the Land Act. As the telecommunications legislation stands, a significant number of reserves fall within the 'commercial area' designation despite those reserves being dedicated for specific community or public purposes—in practice, non-commercial uses.

Preliminary investigations suggest that in excess of 3,000 operational reserves (used for schools, hospitals, core government business, essential services and local government facilities) may be adversely affected by the proposed amendments with significant potential cost implications to trustees of reserves—typically state government entities and local governments..

While, under the Telecommunication Act, there is no obligation for a land owner or an occupier to pay for the relocation or removal of telecommunications facilities unless the facility is in a subdivision (in which case the subdivider becomes liable - schedule 3, section 53), DNRM understands that in practice telecommunication carriers insist on land owners or occupiers paying relocation or removal costs in practice. Owners and occupiers are significantly disempowered in negotiations by the provisions of the Telecommunication Act preventing them from interfering with the facility without the carrier's agreement.

For example, if the telecommunications facility is located on, or is to be installed, on a decommissioned public utility structure (e.g. a water tank) on reserve land, the trustee is or will be obliged to incur on-going and unnecessary maintenance costs in order to maintain the public infrastructure solely because the carrier will not agree to relocate or move the facility. This is already an area of contention under current arrangements potentially significantly exacerbated by the proposed amendments.

DNRM appreciates the need to update legislation to reflect advances in telecommunications technology, however, the proposed changes should not exacerbate the current problems experienced by owners and occupiers and rather should ensure that parties can negotiate on fair terms.

Situations where this situation may arise include the necessary removal or relocation of a new, expanded or larger telecommunications facility because—

- the facility interferes with the operation, quiet enjoyment and safe use of a reserve by the local community for the public purpose for which the reserve was dedicated;
- the structure to which the equipment is attached (e.g. a building, a bridge, etc.,) is scheduled for demolition, renovation or other construction work; or
- the trustee's improvements or community use of the reserve adversely affect the safe, continuous and proper use of telecommunications equipment on the premises.

The current practice of telecommunications carriers demanding land owners and occupiers pay to relocate or remove telecommunication facilities other than under schedule 3, section 53 of the Telecommunication Act has been, at times, unfair and unacceptable.

Therefore, DNRM strongly recommends that consideration be given to:

- amendments with smaller increases in size for existing facilities, new types of facilities and types of facilities in new areas; and
- amendments which clarify and protect the rights of land owners and occupiers with regard to financial obligations beyond a subdivider's current obligation under schedule 3, section 53, specifically, that the owner or occupier has no obligation to pay for the relocation or removal of telecommunication facilities, where the removal is required for the owner or occupier to conduct reasonable and foreseeable infrastructure maintenance or decommissioning.

<u>Rental payments on state land for telecommunication purpose leases</u>

One of the objects of the Land Act is having a market approach in land dealings. Annual rental rates and fees for leases, licences and permits are set under the *Land Regulation 2009* (the Land Regulation). The Land Regulation uses categories based on the purpose and nature of a lease, to identify the annual rental rate. This means that the rental rate is not negotiated at the time that each individual lease is established, as would occur in a commercial market arrangement.

In October 2016, the Federal Court decided that the Land Regulation discriminated against telecommunication carriers, by requiring them to pay a higher amount of rent than lessees for other business purposes (i.e. contrary to schedule 3, section 44 of the Telecommunications Act). The rates for telecommunication facilities were based on market analysis.

Until 1991, Telecom was the only provider of telecommunication services in Australia. Around the time that the Telecommunications Act was enacted, the telecommunication market was undergoing change, with more telecommunication providers entering and competing for the

provision of these services. The nature of the market has changed. It is no longer a market comprising a monopoly government owned corporation.

While telecommunication carriers have a public service obligation to provide a telecommunication network, these telecommunication carriers are market participants operating on a profit basis. In addition, DNRM is unaware of any Commonwealth legislation that affords protection against discrimination (similar to schedule 3, section 44 of the Telecommunications Act) to providers of essential services such as clean water, sewerage and electricity for community purposes.

It follows that, telecommunication carriers should be subject to paying a fair and reasonable commercial market rental rate for leases they hold, regardless of whether these leases are on freehold land or not.

DNRM proposes that the provisions of the Telecommunications Act be reviewed to acknowledge that the nature of the telecommunications market has changed, and that telecommunication carriers may be charged a commercial market rental rate for leases, licences or permits that they hold on state land Comparable to rates on non-state land and infrastructure.

DNRM welcomes further consultation on these matters.

Additional information

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Telecommunications towers may transmit at power and frequency that could induce explosions in certain explosives storages, manufacturing areas or sites using explosives. An area that has licenced explosives activities should not have any telecommunications facilities that have output power that could affect explosives. AS 2187 outlines the restriction related to usage but specific advice should be sought from the explosives inspectorate in relation to the activity at a licenced site and an understanding of the outputs of the proposed telecommunication facility.

An explosives activity being conducted at an unlicensed site subject to would capture such hazards in specific risk assessments associated with the activity.

Below is the sort of indicative results around frequency and power.

15.76 Minimum Separation Distances from transmitters as advised in Australian Army Manual of Land Warfare, Part 2 Engineers, Vol 2, Pamphlet No 6 Demolition and Live Mine Range Practices, should be observed wherever possible. In the absence of local orders regarding safe distances, Table 15-3 may be used as an indicative guide:

FREQUENCY (MHz)	TRANSMITTER OUTPUT POWER (Watts)							
	3	**5**	**10**	**20**	**30**	**40**	**50**	**100**
2-32	61	78	111	157	192	222	248	350
32-100	25	33	46	65	80	92	103	146
100-200	8	10	15	21	26	30	33	47
Over 200	4	5	7	10	13	15	17	23
Mobile Phone	3							
Note:								

Table 15–3: Minimum Separation Distance (Metres) from a Radiating Communications Transmitting Antenna for Electrically Initiated Explosive Ordnance