



Queensland Treasury

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Dear Dr Smith

Possible amendments to the telecommunications carriers' powers and immunities

Queensland Treasury provides the following submission in response to the Department of Communications and the Art's 'Possible amendments to telecommunications carriers' powers and immunities' Consultation Paper dated June 2017 (Consultation Paper).

The State of Queensland is a key stakeholder in the matters under consideration in the Consultation Paper. As an owner of land, roads, and utilities, the State's rights and interests are affected by telecommunications carriers' powers and immunities. The State holds significant land and infrastructure assets upon which telecommunications carriers install, maintain and operate their network infrastructure. Across all Queensland State agencies, the State is the lessor of over 600 leases with telecommunications companies or broadcasters. In addition, State agencies have entered into a number of site specific agreements with telecommunications carriers, and State agencies also issue licenses and permits, for mobile phone and telecommunications tower sites. The purpose of this submission therefore is to highlight some of the key financial and commercial implications to the State of the proposed amendments specifically:

- the risks that arise to the State due to the powers and immunities of the telecommunications carriers;
- the State's reduced ability to manage those risks, due to the proposed amendments;
- and

- the State's current inability to receive an appropriate payment from telecommunications carriers to compensate the State for the cost of managing the above risks and which recognise telecommunications carriers' third party use of State land or infrastructure. This results in a transfer of cost and risk from telecommunications carriers to the State, the value of which will increase with the proposed amendments.

This submission has been prepared following consultation with a range of State agencies, including:

- Department of the Premier and Cabinet;
- Department of Transport and Main Roads (DTMR);
- Department of Natural Resources and Mines (DNRM);
- Department of Agriculture and Fisheries;
- Department of Education and Training;
- Department of Energy and Water Supply;
- Department of Environment and Heritage Protection;
- Department of Housing and Public Works;
- Department of National Parks, Sport and Racing; and
- Department of Science, Information Technology and Innovation.

Given the limited time provided to respond to the Consultation Paper, Queensland Treasury has not had the opportunity to obtain feedback from all key stakeholders potentially affected by these proposed amendments. However the issues identified are likely to also be faced by other State government departments, government owned corporations, and local governments.

Background

The purpose of the *Telecommunications Act 1997 (Cth)*¹ is to promote:

- the long-term interests of end-users of carriage services or of services provided by means of carriage services;
- the efficiency and international competitiveness of the Australian telecommunications industry; and
- the availability of accessible and affordable carriage services that enhance the welfare of Australians.

Schedule 3 of the *Telecommunications Act* provides telecommunication carriers with the powers to enter the land for inspection and to install and maintain certain types of facilities. Telecommunication carriers exercising their powers under Schedule 3 must do so in accordance with the obligations set out in the *Telecommunications Code of Practice*. The *Telecommunications (Low-impact Facilities) Determination* specifies, for the purpose of Schedule 3, what a 'low impact facility' is and where carriers can install these facilities.

¹ Section 3 *Telecommunications Act 1997 (Cth)*.

The *Telecommunication Act*, *Telecommunications (Low-impact Facilities) Determination* and *Telecommunications Code of Practice* (collectively referred to as the Telecommunication Legislation) commenced in 1997. Since this time, Telstra has been fully privatised and over 30 commercial players have entered the Australian telecommunications industry. The Consultation Paper acknowledges that the Australian telecommunications industry has changed significantly since 1997 and that it continues to evolve. The carriers' powers under the Telecommunications Legislation have not reflected changes in the industry structure. However, in our view, the changes required to the Telecommunication Legislation should not solely be to "*reduce the regulatory cost and burden*" as the Consultation Paper suggested, but should also seek to address the commercial and risk issues arising for owners of land and infrastructure, and provide a more equitable and effective mechanism for managing the placement of telecommunications facilities on that land and infrastructure.

While it is acknowledged that the powers and immunities in Schedule 3 assist telecommunication carriers to install and maintain telecommunications network facilities, it is our opinion that the current operation of these provisions is having detrimental impacts on landholders, including the State. This overall results in a transfer of costs and risks from telecommunications carriers to other parties. Queensland Treasury is concerned this situation will be further compounded by the proposed amendments, unless changes are made which both enable and require ongoing management of these issues in accordance with industry best practice (as is currently followed by a range of other infrastructure providers and industries).

Risks arising from telecommunications carriers' powers and immunities

There are a range of risks associated with the installation of telecommunication facilities on State land or infrastructure which are not always understood by telecommunication carriers or their contractors. These can encompass matters such as:

- workplace health and safety risks, for both telecommunications carriers and State staff and contractors;
- public health and safety risks, resulting from the location of telecommunications infrastructure on land or adverse operational impacts on existing State infrastructure;
- adverse structural impacts on existing infrastructure, leading to increased or brought forward maintenance, remediation or replacement works, primarily at the cost of the host agency;
- security and privacy risks, associated with the need to appropriately identify and manage persons working on critical and other infrastructure;
- financial risks, resulting from, amongst other things, the refusal of telecommunications carriers to indemnify host agencies against a variety of losses that could potentially result from the installation of telecommunications facilities;
- reduced ability of the host agency to effectively and strategically manage its assets, due to low levels of successful engagement with telecommunications carriers on a range of issues including forward planning and location of relevant works, adoption of appropriate standards for completion of work and information provided about proposed works; and
- host agencies being unable to decommission particular works due to telecommunications carriers refusing to take responsibility for installing alternative host infrastructure.

Queensland Treasury understands several Queensland departments and government owned corporations are making separate submissions on the Consultation Paper which will provide more information about the above concerns and include technical and practical examples.

The State's reduced ability to manage those risks

The current framework for the installation of low impact facilities includes several features that appear to be intended to prevent or resolve issues that may arise between telecommunications carriers and land and infrastructure owners. These include:

- mandatory conditions relating to the carrying out of authorised activities;
- agreements between telecommunications carriers and public utilities;
- notifying land owners of proposed activities; and
- a process for claiming compensation for financial loss suffered as a result of anything done by a telecommunications carrier exercising its statutory powers.

Despite the existence of the above provisions, feedback received from several government departments suggests the above features are not currently operating in the most effective manner. For example, it is not compulsory for a telecommunications carrier to enter into an agreement with a public utility about the manner in which the carrier will exercise its statutory powers. We understand none of the agencies we consulted with have been able to successfully negotiate a section 11 agreement with any telecommunications carrier, although many commented positively about the level of engagement by one particular carrier. In these circumstances, the State frequently experiences difficulties in having its interests and concerns satisfactorily addressed under the current framework. The consequence of this is that current and future operational and maintenance risks, responsibility for remediation actions and many cost impacts, by default, become the responsibility of the State, with associated costs borne by taxpayers. In addition, many agencies have expressed concern about the proposed reduction in notification periods and the timeframes for lodging an objection.

Queensland Treasury understands several of the submissions being made by Queensland departments will provide more information about the deficiencies with the current regulatory framework, and propose changes that would help address their concerns.

Recovery of costs

The Consultation Paper fails to consider the full range of costs currently incurred by the State in mitigating or addressing the risks resulting from the actions of the telecommunications carriers or their sub-contractors in operating under their powers and immunities. Further it does not consider payments made that recognise the third party use of State land or infrastructure. Instead, the Consultation Paper suggests that the proposed amendments will “*reduc[e] the administrative burden on ... state, territory and local governments*”. Whilst it is acknowledged that the proposed amendments may reduce the number of development applications made by telecommunication carriers under State planning laws, this ignores the other costs incurred by the State associated with reviewing and approving the installation of telecommunication towers and infrastructure on State land and infrastructure.

The Consultation Paper states that the telecommunication carriers’ estimate that the proposed amendments will result in “*over \$100 million per year in regulatory cost savings to industry and government and over \$50 million per year in economic and social productivity benefits to customers*”.

What this figure does not take account of is:

- (a) the additional expenses that will be incurred by the State in maintaining the sites; or
- (b) the cost of accommodating relocations of telecommunications facilities located on State land and infrastructure.

Current estimated costs incurred by the Department of Transport and Main Roads include approximately \$20,000 per application for utilities requesting access to structures, generally being for relocation costs and delay costs. Additional costs may also be incurred, for example where infrastructure is required to be replaced earlier than was otherwise planned. The Department of Transport and Main Roads has 3,060 structures within the State. In the circumstances we consider the costs incurred by the State are likely to increase as a result of the proposed amendments.

Summary

The Consultation Paper suggests the broadening of the powers and immunities for these telecommunications carriers will result in service efficiencies and cost savings for carriers, and potentially ultimately consumers.

We submit that legislation regulating telecommunications should strike a balance between the rights and interests of landholders and the broader public interest in ensuring access to efficient services and a profitable and competitive industry. The purpose of the *Telecommunications Act*² is to promote:

- the long-term interests of end-users of carriage services or of services provided by means of carriage services;
- the efficiency and international competitiveness of the Australian telecommunications industry; and
- the availability of accessible and affordable carriage services that enhance the welfare of Australians.

The proposal to further broaden telecommunications carriers' powers and immunities should balance the potential improvement in network coverage, customer affordability and other user benefits with the risk and financial implications to bodies (including the State) outside the telecommunications industry.

We would welcome an opportunity for Commonwealth officials to meet with a group of Queensland Government representatives to consider this issue further.

Yours sincerely



Jim Murphy
Under Treasurer

26/7/17

² Section 3 *Telecommunications Act 1997* (Cth).