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

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General comments

This submission relates to the present impact of the Low Impact Determination 1997 on commercial properties, the inability to manage sites, the increasing space utilised by the now deregulated telecommunications industry and the cost to industry of this unmanaged use of privately owned properties

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 telecoms facilities are placed in many areas deemed available to the telecom 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?

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 NOT agreed as once lost it is lost forever unlike telecommunications facilities that age very quickly. 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?

Where radio 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 bully site 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)?

These facilities need to be sensitively placed and strictly comply with structural loadings and intended use of the original site and ABCB laws. 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)?

No, unless they impact the amenity and profitability of the area and its surrounds due to its location. Carriers need to be accountable in law to NOT diminish site value without the cost of doing so and also to make every endeavour in concert 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 land owner as it is a long-term impost to their structure. Any structural imposition of this type in Australia's society by another business sector, for their commercial use, is or should be protected by law and the countries' constitution, unlike what occurs under the present legislation.

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?

Indeed, but each case needs to be sensitive to the community and site owner's requirements not the carriers. The take up and use of property for completely separate business need, needs considered collaboration not a take over, as is the case at the moment with present laws.

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 use of omni antennas, depending on usage and OH&S and interference to existing domestic services, should be carefully considered, as by their nature, they are low in mass and simply disguised. However, the power able to be emitted needs to follow safety standards and interference to other services. Worsening of RF noise floor generally in the lower frequency VHF and UHF bands also needs to be considered due to this omni emission.

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

Telecommunications services providers, requiring the use of radio at present, require reduced requirements, as proposed, any easing will only increase to present bully behaviour from this industry and further remove rights of the community and particularly the commercial property sector. These industries need structure to ensure just collaboration and this is certainly not the case at present with the present low impact laws. Also how does the Australian constitution allow for this to occur as it is consumptive of another parties private property or amenity.

7.2 Are the proposed dimensions for these facilities appropriate?

No unless the telecommunications industry is operating in a legal framework that totally enshrines the rights of the property owner in terms of rightful compensation dur to diminished amenity or site value. Surely this is common sense!

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?

More details are required as there is clear difference between open land or public land and privately owned and developed building structures and this appear to be ignored by present telecommunication law. A conditional yes, but only where the community including building owners, are not likely to be impacted. It is important for Australians to have their rights protected against impositions of this nature. If mandatory acquisition is the only outcome available, rightful compensation must be agreed along with rules surrounding how collaboration between the parties is to occur. This is an issue of ongoing concern under present the low impact legislation.

9. Tower extensions in commercial areas

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

Certainly, there are considerations related to visual impairment, nature of the base structure and the site 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 telecom service providers have specific needs in the running their businesses, the community and their investments, including commercial buildings need to be protected from unreasonable bullying 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, i.e. superannuation investments in the commercial property industry.

10. Radiocommunications lens antennas

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

Whatever the name adopted, it must make sense to the parties impacted by their placement on their property or building. Do not expect people not versed in telecommunications to understand this field of technology or impact on their buildings or amenity as is the case at present. Telecommunications consists of complex science and engineering requirements and this needs to be understood when working with the community. Give it a name but ensure it is 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 that is mandated and passes the reasonable test unlike what occurs today with commercial buildings. 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. Community values need to be protected by legislation, not lost due to it, unlike the present case under prevailing low impact legislation. Thus, commercial areas are fine provided the structure has occurred because of fair commercial collaboration and any impact on the working community operating in the nominated area is adequately considered.

11. Cabinets for tower equipment

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

A so-called cabinet of the dimension given is not a cabinet but an enclosure to house numerous facilities. The terminology needs to adequately define the structure and its use for anyone to understand. As for size, this depends on the site and location on a building along with any operational impact to the site. Provided the structure is well considered, does not obstruct the sites operational requirements or planned future development and is commercially agreed there should be no objection. However to be fair to the structure owner commercial terms and site access need to be agreed.

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 provided the land-owners are suitably compensated and protected in terms of their land use now and into the future. Obviously solar must be located within a permanent open space and this also needs to be considered as not simply the location of the panels.

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?

This is very dependent on the area and so should be treated on a case by case basis. Brown field location are becoming higher in population density with both vehicle and foot traffic and any opening needs to properly consider OH&S 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 accommodated and the area is sensitively managed this should be OK. Also with the mechanical ditch machinery available surely the trench can be opened and closed in a short time and not left open and therefore unmanaged.

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?

No but access to the structure, maintenance access and egress to the structure needs to be properly considered. Added to this is the access to the bridge structure of the cable duct and how this is to occur. This statement appears to be a little on the simple side for the uninformed to advise on.

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?

This is not well managed now under the prevailing telecom 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 telecom service licensees, space is an issue that is presently unmanageable with significant commercial loss to site 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?

If the volume is increased by 50% occurs within a commercial property, this can only be a further land grab and not efficiency especially with no management of obsolescence, and no co sharing of the telecom infrastructure as at present. Sound commercial and economics and a good means of managing this additional infrastructure needs to be mandated when consuming a privately owned community resource and the present legislation has ignored this.

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

The smaller the better and preferably less is preferred with new cable and infrastructure technologies becoming smaller. If, unlike the present, space is properly considered with those

impacted fine, but the smaller the better as under present legislation and the number of licenced service providers, each occupying space for their business, the space requirement has become unmanageable. The lessening of the laws should not be permitted as the Telco's see this as free use of another person's property and results in inefficient use of the site. While carriers may see limited impact the property owner and cablers do preventing mandated industry guidelines from being implemented.

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

The Present LIFD is totally inadequate as it only provides rights to carriers. The so called mandated compensation is so ineffective and misused with mediation costly to property owners who are seriously disadvantaged by the determined behaviour of the carriers. Good engineering and sharing of well-designed facilities needs to be mandated in law and certainly is not at present.

16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

No, provide the community is protected from unreasonable attitudes and provided the longer term is properly considered. But presently there is no regulation of the telecom industry or indeed the LIFD so how is any environmental situation to be managed for the community?

16.2 Are there any further suggestions for updates to terms and references in the LIFD?

The community increasingly needs to be connected but the telecom industry needs to be managed to ensure they work with the community and this can only occur if the prevailing laws enable this to happen and this is presently not the case with the deregulated telecom industry. The law needs to be changed to ensure thoughtful collaboration, and a measurement to ensure this occurs unlike the present LIFD.

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?

This is preposterous and is not allowed to occur in any other industry! 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 totally 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 site owner/s. This is presently very poorly managed and needs to be properly understood in terms of impact and cost and the LIFT amended. With more and more mobile and Wi-Fi sites likely into the future this needs to be far better managed under the legal framework not lessened based on today's issues.

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, this is not well managed at present with some carriers providing wild estimates of when work may be undertaken. Certainly not given the way the present notification period is used. Every site owner is required to manage their sites, indeed are accountable in common law to ensure their sites are safe and they need to ensure a proposed carrier activity is well considered. How can this occur with the worsening threats to the community of terrorist activities by allowing 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?

At present, this is occurring with at least one carrier and property owners are left not understanding when an activity is to occur. This needs to be considered in framing new legislation or amending the present LIFD is what other activities may be taking place in respect of property owner managed telecommunications with risers 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. The present lack of compensation to land owners under and the lack of on-site expertise available to site owners to manage the day to day and to fully understand what is proposed by the range of carriers seeking access at any one time requires management and this costs with the majority of manhours consumed being related to carriers. It appears the legislators have little understanding of the type and impact of internal cabling and facilities presently deployed or the lack of make-good of redundant facilities building owners are required to manage. This combined with the increasing lack of site information about what is installed and in use is a burden on the property owners. How is it expected they manage this under the present and proposed LIFD with the lack of rights and poor cooperation of 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?

Referring such engineering based matters to the TIO is an absolute a waste of time other than as occurs not to endorce the rights of the carrier, given the TIO mandate is to ensure a service is provided to the end user irrespective of any impact to a site. There are NO underlying rights for the property owner who has only one recourse via the Federal Court system i.e. no rights due to the very high upfront cost to have any form of hearing that might consider any impact to their resource. Surely this is in contravention of the Australian constitution. 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 purportedly 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 surely a denial of common law rights that should be available to all Australians. This needs to be thoughtfully considered and then managed in a collaborative manner with the commercial property industry and not as occurs at present. With a TIO determination overriding common sense, poor engineering, lack of adherence to facility guidelines, thoughtful collaborative engineering and sharing of infrastructure commercial impact to the building owners is denied. They should not bear the cost of another industry without redress as occurs now.

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

The code needs to be mandated as collaborative not as occurs now. Costs related to sites needs 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 as this has not occurred since deregulation, with most carriers 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?

Yes, provided they are truly low impact when considering the quantity of individual low impact facilities likely to be co-sited. If not managed who knows what might be installed on a pole installed for an entirely different need od of which the intended future service might be denied due to unrelated infrastructure. An owners original engineering consideration need to be mandated as a right to squatter users who have no interest in future owner needs as may occur by simply extending present LIFD provisions as occurs now under the present LIFD.

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

Even rural needs proper community consideration and restricted for the reasons given in 21.1

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

Not unreasonable, but what about the number of such structures in the near vicinity and their impact on a community? This needs to be properly defined.

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?

Best to structure this process so all parties to the process have a reasonable time to properly consider just as Telco's need their time to properly consider their requirements well before any form of notice is provided to the community.

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?

This needs further advice re the possible situation but is not unreasonable as used by the outside broadcast industry now. No objection if a situation is properly considered and local conditions and by laws are considered and provided OH&S and community utility are maintained. Giving unlimited rights to any business, Telco or otherwise, without mandated limits could lead to abuse and this is to be avoided. There needs to be parameters put around this requirement.

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, subject to 22.1 considerations.

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?

No. However, in respect of mobile consideration of OH&S is required. The act is now far too liberal and denies common law rights to people impacted by these facilities. If required as a community need and properly managed as distinct from imposed, should be OK.

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

This can only come out of a properly constituted panel discussion with community experts fully representing all interested parties particularly the community likely to be impacted.

23. Replacement mobile towers

23.1 Is the proposal reasonable?

Yes, provided the property owner and any impacted users of the land are properly considered. Replacing like with like seldom occurs as carriers often need to extend their facilities for greater usage. This means more and more antennas on the new structure and an eye saw at the least. Provided any impact is sensitively managed and commercial consideration occurs this is not reasonable. But it is NOT maintenance and it requires proper site engineering and collaboration not enforcement as may occur with the proposed prescribed rights to the industry.

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

This is an OH&S consideration and operational consideration for carriers as well as the land owner/s. As long as the proposed amendments provide for full collaboration that is both sensitive and commercial to market as distinct to what a carrier may deem “their right” there should be no objection.

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

As this is a well understood process for most utilities in respect of power and telecommunication 12 weeks should be adequate but this very much depends on what is proposed and its location.

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?

This is an engineering and amenity question and the community needs to be considered with proper planning. Surely this occurs at present!! This is considered low impact? All reasonable, vista, commercial and engineering considerations need to be built into the process.

A rural open area has massive towers at present mostly owned by TELSTRA, power and broadcast industries. Are they installed under low impact? Why have separate provisions for the telco industry? This is a matter for State and Federal Governments to agree and if possible to share sites to limit the amount of costly infrastructure.