

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

### Date of submission

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Logo of organisation—if an organisation making this submission



Name and contact details of person/organisation making submission

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### 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?  
We agree that this amendment is appropriate.

##### 2. Local government heritage overlays

- 2.1 Are there any issues with this clarification in relation to local government heritage overlays?  
We agree that this amendment is appropriate.

##### 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?

Including shrouds as an ancillary facility has a broader application as it is not limited to only shrouding radiocommunications facilities. We agree that this amendment is appropriate as there

may be circumstances where shrouding another type of facility reduces its visual impact, which could appease landowner concerns.

There is a grammatical error in the proposed amendment, the word 'or' should be added to the end of the proposed new subclause 3.1(4)(aa).

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?

We consider that it is unnecessary to specify additional criteria as the carrier installing the shroud will attempt to design the shroud to maximise its efficiency whilst minimising its size.

#### 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)?

We agree that this amendment is appropriate.

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)?

We agree that this amendment is appropriate.

#### 5. Maximum heights of antenna protrusions on buildings

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

We agree that this amendment is appropriate.

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?

We consider that higher protrusions are acceptable in industrial and rural areas. Visual amenity is of less concern to the community in industrial areas. In both industrial and rural areas, higher protrusions could result in better coverage being achieved from radiocommunications facilities, meaning less facilities are required.

#### 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?

We agree that this amendment is appropriate.

#### 7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

No. We agree that this amendment is appropriate.

7.2 Are the proposed dimensions for these facilities appropriate?

Yes. We agree that this amendment is appropriate.

#### 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?

Yes. We agree that this amendment is appropriate.

## **9. Tower extensions in commercial areas**

- 9.1 Are there any issues permitting tower height extensions of up to five metres in commercial areas?  
No. We agree that this amendment is appropriate.

## **10. Radiocommunications lens antennas**

- 10.1 Is lens antenna the best term to describe this type of antenna?  
Yes. We agree that this term is suitable.
- 10.2 Are 4 cubic metres in volume and 5 metres of protrusion from structures appropriate?  
Yes. We agree that this amendment is appropriate.
- 10.3 Should this type of antenna be allowed in all areas, or restricted to only industrial and rural areas?  
We consider that this type of antenna should be allowed in all areas.

## **11. Cabinets for tower equipment**

- 11.1 Are there any issues with the proposed new cabinet type?  
No. We agree that this amendment is appropriate.

## **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. We agree that this amendment is appropriate.

## **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?  
No. We agree that this amendment is appropriate.
- 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?  
We consider that the allowable length should be increased or the length limitation removed. This would allow carriers to install conduit or cable more efficiently, reducing costs and community impact by ensuring that work is completed as quickly as possible.

## **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?  
We agree that this amendment is appropriate. Though it is likely to be the Department's intention, we consider that the amendment should make it clear that this allows carriers to *attach* the cable and conduit to the bridge and also to install cables within existing conduit on the bridge, which is referred to in the Department's consultation paper but not added as an amendment to the LIFD. This would avoid any argument that the amendment only allows carriers to *lay* the facilities on or under the bridge and not install facilities in another carrier's conduit, i.e. pursuant to a Schedule 1 Facilities Access Agreement between the two carriers. We suggest the following change to the proposed new Item 2(c) of Part 4 to the Schedule of the LIFD:

*(c) or attached on or under a bridge or within existing conduit attached on or under the bridge.*

## 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?

No. We agree that this amendment is appropriate.

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?

No. We agree that this amendment is appropriate.

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

No. We agree that this amendment is appropriate.

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

We consider that the proposed changes are sufficient.

## 16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

No. We agree that these amendments are appropriate.

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

### 1. Nbn Co specific facilities

The Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 1 of 2011) and the Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 1 of 2015) added 13 additional facilities to the LIFD that are only low-impact if installed as part of the nbn or any comparable network (**the nbn-only facilities**). In reality, only NBN Co can utilise the right to install these facilities as it is the only carrier that meets specific criteria in the LIFD. This provides nbn Co with an unreasonable competitive advantage, limits network rollout and limits competitive entry to the telecommunications markets in which carrier operate. Given the Government already considers the facilities to be low-impact, the right to install the facilities should be provided to all carriers rather than remain limited to nbn Co.

Allowing other carriers to install the additional 13 types of facilities is in line with Government policy to allow open competition in fixed line network deployment and operation as expressed in *Telecommunications Infrastructure in new developments, a new approach to competition*, 1 March 2015 (**the Policy Paper**) and in the *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017* and the *Telecommunications (Regional Broadband Scheme) Charge Bill 2017* (**the Bills**). Amongst the Policy Paper's fundamental objectives is to encourage efficiency and to broaden choice in the provision of telecommunications in new developments by encouraging fair competition.<sup>1</sup> Amongst other things, the Bills place obligations on non-nbn fixed line carriers that are designed to ensure that they are subject to level playing field rules in the same way as nbn Co. This includes being required to pay a tax towards the costs of providing the nbn in non-economic areas, functionally separating into wholesale and retail divisions, and fulfilling the obligations required of a statutory infrastructure provider. If other carriers are subject to these obligations, then they should also be given the same rights as nbn Co to install facilities to assist them to

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<sup>1</sup> Australian Government, *Telecommunications Infrastructure in new developments, a new approach to competition*, 1 March 2015, p. 5.

efficiently install infrastructure. The “nbn-only facilities” are all facilities that only carriers operating fixed line networks will install.

We submit that the LIFD should be amended to:

- (a) Allow all carriers to install the 13 facilities that were added to the LIFD in 2011 and 2015; or
- (b) In the alternative, to allow all carriers to install any of the facilities that were added to the LIFD in 2011 and 2015 where there is no evidence of material community concern to date about nbn Co’s use of the additional powers. As nbn Co is a significant way through undertaking a massive network rollout, any community concerns about the installation of the additional facilities would have come to light by now. The installation of these additional facilities by non-nbn carriers is likely to be to a far smaller degree than by nbn Co, so any adverse impact perceived by the community would also be small.

Option (a) is preferable. It is simpler and fairer.

The “nbn only” facilities are:

- Part 3, Item 8 – External building connection equipment
- Part 3, Item 10 – In-building network equipment
- Part 4, Item 6 – Underground network equipment
- Part 4A, Item 1 – A single line link or bundle of line links
- Part 4A, Item 2 – Optical node
- Part 4A, Item 3 – Splice enclosure
- Part 4A, Item 4 – Access terminal
- Part 4A, Item 5 – A single drop cable or a bundle of drop cables
- Part 4A, Item 6 – Premises connection device
- Part 4A, Item 7 – Network termination device
- Part 4A, Item 8 – Power supply
- Part 4A, Item 9 – Amplifier
- Part 4A, Item 10 – Auxiliary network equipment

## **2. In-building subscriber connection equipment**

Often in the course of installing in-building subscriber connection equipment, it would be most efficient for part of the cable route to be mounted on the side of a building/structure or to run above ground for several metres – i.e. the entire installation would not be within a building. This is an issue often faced when attempting to install the lead-in cable for in-building subscriber connection equipment into older buildings where the building entry point for telecommunications cable may be on the side of the building and several metres above ground level. This requires the new cable to run some distance above ground and on the building in order to reach the existing cable entry point. There is often an existing cable/conduit installed in this manner, i.e. above ground and attached to the side of the building to reach the entry point, and it would be preferable and of least impact to the amenity of the building if additional facilities are installed in the same manner. We suggest that the definition of ‘In-building subscriber connection equipment’ is amended to allow this, or Part 3, Item 8 be amended so that external building connection equipment can be installed by any carrier and not only nbn Co.

## **3. Co-located facilities**

Some owners have refused carriers from entering onto land or buildings for the purposes of hauling fibre inside a duct not owned by the carrier but being access under Schedule 1 to the Telecommunications Act. Part 7 of the LIFD should expressly include cabling to be pulled through and laid in an existing conduit.

## **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?

No. We agree that this amendment is appropriate.

### **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?

Yes. We agree that this amendment is appropriate.

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?

Yes. We agree that this amendment is appropriate.

### **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?

No. We agree that this amendment is appropriate.

### **20. Updates to references in the Tel Code**

20.1 Are there any issues with the proposed changes?

No. We agree that these amendments are appropriate.

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

#### **TIO timeframes**

Currently, there is no obligation on the TIO to finalise its consideration of an objection within a specific time frame. This is unreasonable and leads to undue delay. Such delays are contrary to the basis for the legislative scheme, which is designed to facilitate the rapid rollout of low-impact facilities and the provision of modern telecommunications services. The TIO's internal procedures should not be a roadblock to these activities. It also has an unintended consequence of providing landowners with significant leverage as they are aware that carriers wishing to avoid the significant delays that can result from a TIO referral may agree to unreasonable demands from the landowner. Often these demands are contrary to the best interests of end-users of telecommunications services as they have the end result of increasing the cost of providing services, with the additional costs being passed on to consumers in the long term.

We consider that the Tel Code should be amended to state that if the TIO does not make a direction within four weeks of being referred an objection then the carrier may proceed with its proposed activity. The proposed four week time frame reflects the Tel Code's consultation time frame that carriers must adhere to when an objection is made. This would result in objections

causing a maximum eight week delay in a proposed activity. Though this is still a considerable period for delaying rollout projects it is vastly preferable to the unknown and often far longer time frame that can currently result when objections are referred to the TIO. We suggest that the following drafting is added to sections 2.32, 4.33 and 6.32 of the Tel Code to facilitate this amendment:

*Situation 5            The Telecommunications Industry Ombudsman does not deal with the objection or give a direction to the carrier within 4 weeks of the objection being referred to the Telecommunications Industry Ombudsman.*

## **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. We agree that this amendment is appropriate. However, any amendments should apply to all carriers and not be limited to nbn Co. It is unreasonable to give nbn Co such important advantages over its competitors. If a facility is to be characterised as low-impact then all carriers should be able to install the facility.

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

They should be allowed in all areas.

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

Yes.

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?

The existing notification and objection process is sufficient.

### **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?

No. We consider these amendments are appropriate.

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?

We consider that the NSW and Victorian planning laws provide appropriate conditions for the installation of COWs and SatCOWs and should be utilised as a template.

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?

Yes. We agree that this amendment is appropriate.

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

The mobile carrier could be required to register MEOW installations with the ACMA, including an estimated time frame in which the MEOW is required, that should be no more than 1 month. The

carrier should remove the MEOW within 28 days of the expiry of the estimated time frame. It would be appropriate to provide longer timeframes if the MEOW installation is in response to emergencies, network outages or severe weather.

## **23. Replacement mobile towers**

### **23.1 Is the proposal reasonable?**

Yes.

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

Yes.

### **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?**

This is suitable in all commercial, industrial and rural areas.

## **25 Further amendments to Schedule 3 of the Telecommunications Act 1997**

Carriers often experience considerable difficulties exercising their Schedule 3 rights to install low-impact facilities or their Schedule 1 rights to share existing carrier facilities on land owned by certain landowners. An example where we consider that an amendment to Schedule 3 would assist is when landowners argue that a carrier has no right to access their land to install a cable in another carrier's *above* ground conduit, such as existing conduit attached to a structure. In this example, the installation of the new cable would be subject to a Schedule 1 facilities access agreement between the two carriers.

The issue that has been raised by the landowners is:

- Part 4 of the Schedule to the LIFD does not authorise installing a cable inside a conduit; and
- The maintenance powers in clause 7(6)(b)(ii) of Schedule 3 to the Telecommunications Act only allow the installation of additional facilities inside existing *underground* facilities. We understand that the TIO has agreed with this interpretation when dealing with a landowner's objection to another carrier's activity.

We suggest the following amendment to clause 7(6)(b)(ii) of Schedule 3 to the Telecommunications Act to rectify this problem:

*(ii) the additional facility is located inside a duct (whether underground or not), pit, hole, tunnel or underground conduit;*