

# EXPOSURE DRAFT

## Explanatory Statement

*Telecommunications Act 1997*

### **Telecommunications (Low-impact Facilities) Amendment Determination 2021**

Issued by the Authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

#### **Purpose**

The purpose of the *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (the Determination) is to improve the operation of the telecommunications deployment framework and assist the rollout of 5G infrastructure and other telecommunications facilities through amendments to the *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD).

The amendments made in the Determination will interact with some of the concurrent changes to the *Telecommunications Code of Practice 2021* (the Code of Practice) that also aim to improve the operation of the telecommunications deployment framework.

#### **Authority**

The Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister) has made the Determination under subclause 6(3) of Schedule 3 of the *Telecommunications Act 1997* (the Act).

Subclause 6(3) of Schedule 3 of the Act allows the Minister to determine, by legislative instrument, that specified facilities are low-impact facilities for the purpose of that clause. Subsection 13(3) of the *Legislation Act 2003* has the effect that this includes the power to determine particular classes of facilities to be low-impact facilities.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make an instrument of a legislative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument. The Determination amends the LIFD.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

#### **Background**

Telecommunications carriers have certain specific legal powers under the Act allowing them access to land to inspect, to install and to maintain telecommunications facilities. It also provides carriers with immunity from a range of state and territory laws when carrying out those activities, such as laws relating to land use, planning, design, construction, siting, tenancy, environmental assessments and protection. These powers and immunities are set out in Schedule 3 of the Act and primarily relate to the installation of low-impact facilities which are specified in the LIFD.

The powers and immunities framework is critical to the efficient deployment and maintenance of telecommunications networks. It minimises the regulatory burden on carriers so they can quickly and cost-effectively meet the community's need for access to affordable, fast and reliable telecommunications services in a nationally consistent way.

Telecommunications services are increasingly essential to how the Australian public, business and government go about daily life. The increasing demand for telecommunications services, and the current roll out of new technologies, such as 5G, means an update to the LIFD is needed so the economic and social benefits of new communications technologies can be realised.

The LIFD describes the types of facilities specified as low-impact that can be installed under the powers and immunities framework.

### **Amendments made by the Determination**

The Determination amends the LIFD to introduce the following new provisions:

- introduce a “certifiable facility” definition within section 1.5;
- introduce a new “certifiable facility” classification at section 3.2 for the purposes of the new engineering certification requirement being inserted into the Code of Practice; and
- introduce radiocommunications lens antenna as a new type of low-impact facility under Item 13 of Part 1 of the Schedule to the LIFD (the Schedule).

The Determination also amends a number of existing provisions in the LIFD in the following way:

- increase the maximum protrusion length of antennae under Item 4 of Part 1 of the Schedule;
- increase the maximum diameter of a radiocommunications dish under Item 7 of Part 1 of the Schedule;
- amend the current tower extensions conditions to include commercial areas, and to allow a tower to be extended where it has previously been extended by less than 5 metres under Item 12 of Part 1 of the Schedule;
- increase the maximum co-location volume limit in Commercial areas from 25 per cent to 50 per cent at new Item 3 of Part 8 of the Schedule.

#### **Certifiable facilities**

When installing low-impact facilities under Schedule 3 of the Act, carriers must comply with the relevant obligations described in the Code of Practice. Where the LIFD classifies and categorises low-impact facilities that may be installed by carriers using the powers and immunities provided in Schedule 3 of the Act, the Code of Practice sets out the conditions and obligations that carriers must comply with when undertaking these activities.

Consultation with stakeholders identified that landowners are concerned that some facilities are, potentially, not always being installed safely or in accordance with applicable standards and codes. Landowners also expressed concern that they may face additional risk and liability for a poorly installed facility, if that facility causes damage to the landowner's structure on which it is installed.

A new requirement is being introduced in the Code of Practice (concurrently with this Determination) for carriers to provide engineering certificates to landowners following the installation of certain types of low-impact facilities.

The Determination interacts with this requirement from the Code of Practice by including a new section 3.2 in the LIFD specifying a range of above-ground facilities as a “certifiable facility”. The types of above-ground facilities specified in the “certifiable facility” classification are typically of a height, location, design, and/or volume which may cause a landowner to have concerns as to the safety of the installation, such as the structural integrity of the asset or encumbered infrastructure.

For example, a radiocommunications facility of a type listed at Item 8 of Part 1 of the Schedule to the LIFD is typically attached to a pole or other type of infrastructure. The antenna described under subparagraph (a) will be classified as a certifiable facility in all circumstances. A cabinet described in subparagraph (b) will also be classified as a certifiable facility, unless that cabinet is positioned on the ground, or is attached to a structure which is owned by the carrier.

Similarly, for Item 7 of Part 3 of the Schedule, solar panels will be classified as a certifiable facility unless that solar panel is positioned on the ground, or is attached to a structure which is owned by the carrier.

### **Radiocommunications facilities**

The increasing need of the Australian public for access to high quality telecommunications services became readily apparent in 2020 in response to the COVID-19 pandemic and the ongoing trend for work, study and social connectivity being undertaken remotely. To help Australians maintain these connections, telecommunications carriers need to install facilities that will extend and support existing coverage footprints. In some cases, this could involve increasing the size of existing or new equipment, or it may involve the installation of smaller equipment in closer density in some locations. While larger equipment may cause some concern about the impact on visual amenity, these facilities also enable greater co-location amongst carriers, and reduces the need for new standalone facilities to be installed.

The targeted amendments in Part 1 of the Schedule will increase the size of some radiocommunications facilities to maximise the benefits of having larger facilities, while minimising the impact on the local visual amenity. Telecommunications coverage and quality will be greatly improved by increasing the maximum protrusion length of antennae, and by increasing the maximum diameter of radiocommunications dishes. At the same time, increasing the maximum size of antennae and radiocommunications dishes could potentially reduce visual impact, with fewer antennae and radiocommunications dishes needing to be deployed overall.

Radiocommunications lens antennae are a new class of low-impact facility, which will provide high-quality and high-range telecommunications coverage to industrial and rural areas. Residential and commercial areas were excluded from this new low-impact facility item to preserve visual amenity in dense, urban areas. Radiocommunications lens antennae may also reduce the number of panel antennae to be installed on poles or towers.

Coverage for mobile services is largely dependent on the ability of carriers to deploy towers of sufficient height. The existing conditions regarding tower extensions in the LIFD have been amended to include commercial areas, and to allow carriers to extend a tower, even where a previous extension has already occurred. Currently, carriers may only extend a tower where there has been no prior extensions, for a total maximum length of 5 metres. This amendment will allow for multiple extensions to occur, so far as those extensions do not exceed a cumulative total of 5 metres. Allowing tower extensions in commercial areas will have the benefit of increasing coverage in areas where there is a higher density of telecommunications usage.

### **Co-location**

The maximum co-location volume limit in commercial areas has been increased from 25 per cent to 50 per cent. The co-location volume limit in residential areas is unchanged. Allowing greater co-location in commercial areas will improve coverage while reducing the need for carriers to deploy new, standalone facilities.

An explanation of each provision of the Determination is set out in the notes at [Attachment A](#).

## **Regulation Impact Statement**

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### **Consultation**

A number of the amendments to the LIFD set out in this Determination were first consulted on in 2017 in the then Department of Communications and the Arts' consultation paper titled '*Possible amendments to telecommunications carrier powers and immunities*'. These amendments include the protrusion height of antennae, diameter size of radiocommunications dishes, tower extension conditions, and co-location volume limits. A total of 81 submissions were received in response to the 2017 consultation paper, a majority of which outlined concerns about the safety of telecommunications equipment installations generally, and the impact on the structural integrity of landowner assets and infrastructure in particular.

Following the 2017 consultation process, the former Department established the Powers and Immunities Reference Group in 2018, a group of peak bodies representing carriers, utilities, local government and commercial building owners, to consider proposals that would support telecommunications deployments while balancing the needs of landowners.

The Reference Group identified six proposals that could improve operational relationships between carriers and landowners and were included in the 2020 consultation paper:

- standard notifications to be used across industry;
- withdrawal of notifications in the event of cancellation or delay;
- requirement for engineering certificates to be provided to landowners;
- extension of notification timeframes from 10 to 20 business days;
- clarification of the objections process for landowners;
- requirement for carriers to remove redundant equipment from land, assets or infrastructure owned by landowners; and

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- allow carriers to refer objections to the Telecommunications Industry Ombudsman without the need for a landowner's approval or request.

Of these proposals, only the proposal seeking a requirement for engineering certificates to be provided to landowners affects the LIFD. The engineering certificate requirement is contained within section 1A.7 of the Code of Practice. Section 3.2 of the LIFD specifies the facilities to which the requirement applies.

In 2019, carriers proposed a number of changes to existing low-impact facilities specified in the LIFD, as well as the introduction of new facilities such as radiocommunications lens antennae and smart poles. The proposals seeking change to existing low-impact facilities are essentially the same as those proposals originally consulted on in 2017 and include:

- allow antenna protrusions to be extended to a height of 5 metres;
- allow radiocommunications dishes of up to 2.4 metres in diameter;
- specify radiocommunications lens antenna as a new low-impact facility; and
- allow an extension to the height of an existing tower up to a maximum of 5 metres in commercial areas in certain circumstances.

Most of the carrier proposals require a change to existing provisions in the Schedule to the LIFD, and one proposal involves the introduction of a new item in the Schedule to the LIFD.

In September 2020, the Department of Infrastructure, Transport, Regional Development and Communications released a consultation paper setting out the proposed reforms to the framework identified by both the Powers and Immunities Reference Group and the carriers that would assist the rollout of 5G and provide a better balance for the interests of landowners and carriers. During the consultation process, the Department engaged with peak bodies representing carriers, utilities, local government and commercial building owners about the proposed amendments. The Department received 49 submissions in response to the 2020 consultation paper.

Some stakeholders raised concerns as to the safety and visual amenity of increasing the maximum dimensions of antennae and radiocommunications dishes, and in amending tower extension conditions. These concerns are the same as those raised by stakeholders in the 2017 consultation process and are addressed in the following way:

- Concurrent amendments to the Code of Practice and LIFD will clarify and reinforce existing requirements that carriers' exercise of their powers and immunities are conducted safely and comply with industry standards and codes.
- Larger facilities will encourage greater co-location and minimise the impact on the local visual amenity.

### **Statement of compatibility with human rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in [Attachment B](#).

## Notes to the Telecommunications (Low-impact Facilities) Amendment Determination 2021

### Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (the Determination).

### Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed online at [www.legislation.gov.au](http://www.legislation.gov.au).

### Section 3 Authority

Section 3 provides that the source of authority for making the Determination is subclause 6(3) of Schedule 3 of the *Telecommunications Act 1997* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

### Section 4 Schedules

Schedule 1 to the Determination outlines the amendments made to the *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD).

#### Schedule 1 – Amendments

##### Item 1 Section 1.5, definition of certifiable facility

This item inserts a new definition of “certifiable facility” into section 1.5 of the LIFD by cross-referencing the new definition and clause being inserted into the *Telecommunications Code of Practice 2021* (the Code of Practice). A certifiable facility is a facility which is described in section 3.2 of the LIFD. A certifiable facility is then subject to section 1A.7 of the Code of Practice, which requires carriers to obtain and provide engineering certificates to landowners.

##### Item 2 Section 3.2 (Certifiable Facilities)

This item inserts a new section that describes the Items from the Schedule of the LIFD which are to be classified as certifiable facilities for the purposes of section 1A.7 of the Code of Practice. Distinct treatments apply to Item 8(b) of Part 1 for cabinets and Item 7 of Part 3 for solar panels. The new section classifies these specific facilities as certifiable facilities unless they positioned on the ground, or are attached to facilities owned by the carrier. These distinctions are introduced on the grounds that cabinets and solar panels which are affixed to the ground, or are attached to a facility owned by a carrier, pose a reduced structural integrity concern for landowners relative to circumstances where they are attached to a landowner’s structure.

##### Item 3 Schedule (at paragraph (b) of Item 4 of Part 1 – Radio facilities)

This Item amends the maximum protrusion length of an antenna from a structure from 3 metres to 5 meters. This amendment aims to improve the size of the coverage area through greater height while minimising the impact on visual amenity.

**Item 4                    Schedule (at paragraph (a) of Item 7 of Part 1 – Radio facilities)**

This Item amends the maximum allowable diameter of a radiocommunications dish from 1.8 metres to 2.4 metres. This amendment aims to improve both coverage and backhaul options for communications services while minimising the impact on visual amenity.

**Item 5                    Schedule (Items 12 and 13 of Part 1 – Radio facilities)**

This Item repeals Item 12 of Part 1 and substitutes it with an analogous Item, having amended Column 3 to include commercial areas, and amends Column 2 to allow for multiple extensions of a tower where all previous extensions have been for less than a total of 5 metres. Allowing tower extensions in commercial areas will increase mobile service coverage in areas where there is a higher density of telecommunications usage. The total cumulative height of extensions must still be no more than 5 metres, to minimise their visual impact.

This Item also inserts a new Item 13 into Part 1 of the Schedule, which introduces radiocommunications lens antenna as a new type of low-impact facility. This facility type will have a maximum protrusion length from a structure of 5 metres, and a maximum volumetric limit of 4 cubic metres. This item must also be colour matched to its background, or in a colour agreed in writing between the carrier and the relevant local government authority. Radiocommunications lens antennae are another option available to carriers to provide high-quality and high-range telecommunications coverage to consumers. To help reduce visual amenity impacts, the deployment of this type of low-impact facility will be limited to industrial and rural areas.

**Item 6                    Schedule (Item 2 of Part 8 – Co-located facilities)**

This Item amends Column 3 to remove commercial areas from Item 2 of Part 8 of the Schedule. The item will exclusively apply to residential areas. The current maximum co-location volume of 25 per cent remains unchanged. Commercial areas will be regulated in a separate item, being Item 3 of Part 8.

**Item 7                    Schedule (Item 3 of Part 8 – Co located facilities)**

This Item inserts a new Item 3 into Part 8 of the Schedule to specify a new co-location volume limit for commercial areas. Item 3 of Part 8 contains the same specifications as Item 2 of Part 8, except it applies an increased co-location volume of 50 per cent for commercial areas.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Low-impact Facilities) Amendment Determination 2021

The *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (the Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Determination**

Part 1 of Schedule 3 of the *Telecommunications Act 1997* (the Act) provides authority for telecommunications carriers to inspect, install and maintain low-impact facilities without seeking state, territory or local government planning approval or landowner consent. The *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD) specifies the types of low-impact telecommunications facilities that can be installed under the carrier powers and immunities set out in Schedule 3 of the Act.

The purpose of the Determination is to:

- increase the maximum dimensions of antennae and radiocommunications dishes, which are already low-impact facilities listed in the Schedule of the LIFD;
- introduce radiocommunications lens antenna as a new type of low-impact facility;
- amend the current conditions for tower extensions to allow for multiple extensions to occur, to the same maximum cumulative limit of 5 metres;
- increase co-location volume limits in commercial areas, which allows for multiple telecommunications facilities to be installed on a single item of infrastructure; and
- introduce a new “certifiable facility” classification and definition, cross-referencing amendments to the Telecommunications Code of Practice 2021 which requires telecommunication carriers to obtain engineering certificates for certifiable facilities.

The Determination is compatible with the rights and freedoms recognised or declared in the treaties listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

No human rights issues were raised during the consultation undertaken in developing the draft Determination.

### **Human rights implications**

The Determination does not engage any of the applicable rights or freedoms.

### **Conclusion**

The Determination is compatible with human rights as it does not raise any human rights issues.