

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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General comments

Aurizon is pleased to provide its views on possible amendments to telecommunications carrier powers and immunities. Aurizon has some specific concerns with the amendments proposed, which are outlined in the “Responses” section below. However, as a general comment:

1. Aurizon does not support the expansion of telecommunications carrier powers and immunities to widen the scope of low-impact facilities.
2. This is because Aurizon has concerns around the safety and cost implications associated with expanding telecommunications carrier powers and immunities. These concerns have arisen as a result of Aurizon’s experience both as a railway manager and land owner.

Aurizon is committed to ensuring that its railway operations are managed safely and in compliance with its obligations under the *Transport Infrastructure Act 1994* (Qld) and *Rail Safety National Law*

(*Queensland*) Act 2017 (Qld). Railway operations are, by their nature, very dangerous. There is a significant risk of harm to both people and property when work is undertaken on or near rail corridors, including works to install and maintain telecommunications facilities. It should be noted that sites used for the operation of trains (such as hilltop telecommunications facilities) are considered ‘railway corridor’.

In order to mitigate the inherent risks, Aurizon requires a number of essential measures to be undertaken when works are proposed to be conducted on or near rail corridors. These include the following:

- (a) **(Qualifications)** As required by legislation, Aurizon requires that all workers must be suitably qualified and be in possession of a Railway Industry Worker Card with suitable endorsements for the work being performed.
- (b) **(Safe work method statement)** A safe work method statement covering all aspects of all activities must be considered and approved by Aurizon before works are undertaken.
- (c) **(Assessment and supervision)** Works on rail corridor must be assessed prior to commencement by a qualified protection officer. Works which are approved may also require the mandatory deployment of a protection officer to supervise all activities.
- (d) **(Aurizon’s safety standards)** Contractors and other entities’ safety management systems must comply with Aurizon’s safety standards.

These measures impact the way in which Aurizon is able to manage its railway obligations. They are resource intensive, time consuming and, consequently, Aurizon incurs significant costs in order to firstly, meet its safety obligations and secondly, keep all workers, either internal or contractors, safe.

Where works are proposed which necessitate Aurizon undertaking the measures described above, Aurizon usually reaches agreement with the persons proposing the works that they will reimburse Aurizon for the associated costs. However, in Aurizon’s experience, some carriers are unwilling to agree to this approach.

Schedule 3 of the *Telecommunications Act 1997* (Cth) provides that a carrier must pay reasonable compensation to a person who suffers financial loss or damage because of the exercise of carrier powers in relation to any property owned by that person, or in which that person has an interest. However, this compensation regime does not contemplate compensation for stakeholders such as Aurizon for the types of costs described above.

In view of the concerns outlined above, Aurizon considers that:

1. The scope of low-impact facilities should not be expanded. In fact, given the inherently dangerous nature of railway operations, Aurizon considers that no telecommunications facilities should be classified as low-impact facilities if they are conducted on rail corridor land.
2. Given the meaning of “maintenance” in clause 7(3) in Schedule 3 of the *Telecommunications Act 1997* (Cth), carriers’ maintenance powers under Schedule 3 should not apply to telecommunications facilities on rail corridor land.
3. If points (1) and (2) above are not possible, the compensation regime under the *Telecommunications Act 1997* (Cth) should be amended so that, in addition to the current requirement for compensation in cases of financial loss or damage, carriers are required to reimburse for costs reasonably incurred as a result of the installation and maintenance of telecommunications facilities.

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?

Not applicable.

2. Local government heritage overlays

- 2.1 Are there any issues with this clarification in relation to local government heritage overlays?

Not applicable.

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?

Not applicable.

- 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?

Not applicable.

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)?

Aurizon has concerns that its towers will not be able to support larger radiocommunications dishes. Aurizon considers that the maximum size should remain 1.2 metres in diameter.

- 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)?

Same comments as for 4.1.

5. Maximum heights of antenna protrusions on buildings

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

Aurizon does not consider that increasing the antenna protrusion height to 5 metres on buildings and structures is appropriate. This is because there is a much greater risk of an antenna having a negative impact on the structural integrity of buildings at this height. Aurizon considers that a maximum of 3.5 metres 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?

Same comments as for 5.1. Aurizon considers that a maximum of 3.5 metres is appropriate considering the issues associated with structural integrity and aesthetics.

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?

Not applicable.

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

Not applicable.

7.2 Are the proposed dimensions for these facilities appropriate?

Not applicable.

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?

Not applicable.

9. Tower extensions in commercial areas

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

Not applicable.

10. Radiocommunications lens antennas

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

Not applicable.

10.2 Are 4 cubic metres in volume and 5 metres of protrusion from structures appropriate?

Not applicable.

10.3 Should this type of antenna be allowed in all areas, or restricted to only industrial and rural areas?

Not applicable.

11. Cabinets for tower equipment

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

Not applicable.

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?

Not applicable.

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?

Not applicable.

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?

Not applicable.

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?

Aurizon does not consider that installation of cable and conduit on or under bridges should be permitted as a low-impact facility. This is due mainly to the following:

- (a) the high risk that the railway environment presents;
- (b) the logistical challenges involved to integrate works within the rail corridor;
- (c) the requirement for:
 - (i) electrical isolations and track closures to be put in place;
 - (ii) anyone working on rail corridor to comply with the *Rail Safety National Law (Queensland) Act 2017* (Qld) and to be appropriately attired and suitably qualified; and
 - (iii) a protection officer to be present at all times;
- (d) concerns around the loading impacts to the structure as a result of cable infrastructure; and
- (e) concerns around other detrimental impacts to the structure and potential hazards. For example:
 - (i) drilling holes in structures can have detrimental impacts if holes are unsealed, as this may allow the ingress of water into concrete which could lead to the premature failure of steel reinforcement; and
 - (ii) laying cables and/or conduits in waterways, especially through drains, is hazardous, as they can be damaged by machinery when drains are being cleaned.

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?

Not applicable.

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?

Not applicable.

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

Not applicable.

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

Not applicable.

16. Updates to environmental legislation references in the LIFD

16.1 Are there any issues with the proposed updates?

Not applicable.

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

Not applicable.

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?

Not applicable.

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?

Aurizon does not support changing the objection period so that it is calculated with reference to when the notice was issued, rather than the date work is expected to commence. Depending on how far in advance a notice is given, it may be difficult for land owners and occupiers to determine whether they should raise an objection, as this decision can depend on factors which may only be known closer to the date that work is expected to commence. This may result in a higher likelihood of land owners and occupiers raising objections in order to preserve their rights as a matter of course.

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?

Aurizon does not consider that 5 business days is a sufficient time period for land owners and occupiers to object to carrier activities. In Aurizon's experience, it can take some time to determine whether to raise an objection, as it usually takes longer than 5 business days to assess the proposed work, consult with multiple stakeholders and obtain various approvals from various parts of the organisation. The proposed timeframe is not realistic for organisations as large as Aurizon.

For the same reasons, Aurizon has concerns regarding the length of the notice that carriers are required to provide to land owners and occupiers before the commencement of works. Aurizon considers that carriers should be required to provide at least 30 days' notice.

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?

Not applicable.

20. Updates to references in the Tel Code

20.1 Are there any issues with the proposed changes?

Not applicable.

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

Not applicable.

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?

Aurizon does not consider it reasonable for poles in rural areas for telecommunications and electricity cabling for telecommunications networks to be low-impact facilities. This is because, in Aurizon's experience, most of these items are located on or near rail corridor and Aurizon has concerns around the impact to train operations as well as access to sites.

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

Aurizon considers that, if poles for telecommunications and electricity cabling for telecommunications network are included as low-impact facilities, restricting these to rural areas is the preferred outcome.

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

Not applicable.

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?

Aurizon considers that the existing timeframe for responding to a notification does not allow sufficient time for lodging an objection. The proposed changes described in section 18.2 shorten this timeframe even further.

Aurizon considers that carriers should be required to comply with additional consultation requirements (in the form of having a longer timeframe for providing a response and a requirement for more detailed information of the proposed work and its impact). This would assist in ensuring that the long term requirements of the industry and the community at large (and the individuals within the community) are met.

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?

Not applicable.

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?

Not applicable.

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?

Not applicable.

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

Not applicable.

23. Replacement mobile towers

23.1 Is the proposal reasonable?

Not applicable.

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

Not applicable.

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

Not applicable.

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?

Not applicable.