

ALGA Submission to the consultation paper on possible amendments to telecommunications carrier powers and immunities

Via email to: powersandimmunities@communications.gov.au

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The Australian Local Government Association (ALGA) welcomes the opportunity to make comments on the Department of Communications and the Arts Consultation Paper on ***Possible amendments to telecommunications powers and immunities***, which was released on 9 June 2017.

ALGA is the voice of local government in Australia, representing around 537 councils across the nation. ALGA's President represents local government as a member of the Council of Australian Governments and several other ministerial councils. In structure, ALGA is a federation of state and territory local government associations. This submission has been prepared in consultation with ALGA's members, and should be read in conjunction with any separate submissions received from state and territory associations as well as individual councils.

General comments

ALGA notes the intention to clarify the operation of existing powers and immunities, amend references in the Telecommunications Code to reflect changes to legislation since the Code was drafted and to consider how new technologies and new types of facilities under the multi technology mix can be rolled out more efficiently and effectively.

ALGA understands the desire is to enable carriers to deploy the most modern and effective technology and reduce their administrative burden, but this should not be an end in itself. We note that there may be potential improvements which can be made to streamline the installation of facilities, improve the provision of services to customers, and reduce the administrative burden and costs.

ALGA also accepts that the demand for better mobile services and demand for data over mobile and fixed line services is growing rapidly and this brings with it growing pressures to expand the number of telecommunications stations and facilities. However, at the same time, communities through their local governments have also expressed significant concerns over the Low Impact Facilities Determination (LIFD), specifically adequate consultation with local government, as well as adequate remediation following the installation of infrastructure.

It is not surprising that carriers will continue to push to speed up approval processes, reduce their costs and reduce timeframes. This purely commercial interest needs to be balanced with planning laws which are designed to protect public safety and limit impacts on the environment, whilst ensuring that the community has a say in the planning process.

The amendments proposed in the Consultation Paper have caused serious concerns in the local government sector, insofar as they override important planning, consultation and safety assessment provisions. Local governments have a legislative role in assessing developments and infrastructure which will impact the local community, to ensure there are no adverse impacts of a telecommunications facility. Local government's planning and assessment role involves ensuring the physical location, design and structural integrity are appropriate and that issues such as heritage and environmental protection are adhered to.

The issues which are causing the most concern to our members are in the proposals are, firstly, in relation to cables and conduits on bridges as low impact facilities. Bridges are complex structures and any alteration may have significant impacts on the safety and function of the structure. Secondly, there is major concern regarding the reduction of the time for objection from 10 business days to 5 business days.

In relation to specific numbered proposed amendments, ALGA makes the following comments:

1. Definition of co-located facilities

ALGA agrees that there should be absolute clarity and certainty regarding the definition of co-located facilities. As a general principle, any facility which is not on or within an existing facility, should not be designated a co-located facility and should be subject to the normal Local Government assessment processes. The erection of any new infrastructure should be assessed and approved by Local Government.

ALGA's position over several years has been to support the co-location of mobile base stations where possible, and support open access and co-location in greenfields sites, so that they are designed and built to be capable of supporting at least two further mobile network operators.

2. Local Government heritage overlays

The LIFD should not be able to override Local Government's Heritage provisions or precincts. These areas have been identified to protect the integrity of the area. The fact that a Local Government Heritage overlay is not listed on a heritage register must not lead to the assumption that it has less heritage, cultural or environmental significance. Local Government has heritage provisions under its local planning scheme and the heritage sites have been identified and recognised through an extensive investigation and community engagement process. Uncontrolled access within heritage precincts could adversely impact the integrity of the area. Heritage precincts should by their nature never be considered low impact.

Telecommunications carriers should have an obligation to go through an approval process and demonstrate how the proposed facility respects the designated heritage precinct and can fit/blend into

the area. ALGA stresses the importance of proper community consultation in relation to heritage and special cultural, landscape, and environmental areas.

3. Radio shrouds as an ancillary facility

Carriers have been asked to look at design solutions which improve the appearance of mobile communications facilities. Radio shrouds are designed to screen low-impact facilities such as mobile phone antennas and the proposal in the Consultation Paper is to include them within the definition of “ancillary facility” in the LIFD.

From a Local Government perspective, improving the visual appearance of mobile phone facilities is welcome. However, the addition of a shroud could impact the structural integrity, particularly if it is large. If installed on a local government structure shrouds should not automatically be exempt from local government approval and should be listed as a distinct facility under the LIFD. Both structural and visual impact should be assessed - the larger the shroud, the greater the potential for structural issues. Questions relating to exemptions or compliance standards are ultimately at the discretion of individual councils and state government planning and design objectives.

4.-12. Size of radio communications and satellite dishes, maximum heights of antennae on buildings, use of multidirectional antennae, radio communications facilities, and equipment installed inside a non-residential facility, tower extensions in commercial areas, radio communications lens antennae, cabinets for tower equipment, and size of solar panels used to power telecommunications facilities

Each of these proposals aims to increase current permitted maximum sizes of telecommunications equipment or introduce new LIFD categories:

- Radiocommunications and satellite dishes to increase from 1.8 to 2.4 metres in diameter;
- Antennae and their mounts to increase from 3 metres to up to 5 metres;
- Omnidirectional antennae proposed to be designated low impact in residential and commercial areas, in addition to the current situation where they are regarded as low impact only in industrial and rural areas;
- Radiocommunications facility (formerly called micro cell) permissible antenna height increased from 1 to 1.2 metres and all small radiocommunications facilities – regardless of their wireless coverage footprints – to be covered by the LIFD. Currently a micro cell is LIFD if it has a cabinet of no more than 1 cubic metre and a separate antenna up to 1metre long - low impact micro cells are currently permitted in all areas;
- Installing low impact facilities inside non-residential buildings (such as a roof space) where currently this can be done only on the outside of a building. This would allow carriers the right to enter land (including public areas of buildings) in residential areas to install facilities inside structures for non-residential use;
- Tower height extensions of up to 5 metres in commercial areas (if the height of the tower has not previously been extended, or was extended by less than 5 metres). Currently LIFD only allows tower

height extensions of up to 5 metres only in rural and industrial areas, not commercial and residential. This change would allow carriers to place more antennae and associated equipment on each tower and would facilitate co-location;

- Adding a new type of facility to the LIFD – lens antennae, with a substantive volume of 4 cubic metres (ie 140 x 140 x 160cm), with total protrusion of structure no more than 5 metres. It is proposed they be permitted in residential, commercial, industrial and rural areas. Colour to be agreed between carrier and relevant Local Government;
- Adding a new type of facility to the LIFD – cabinets for tower equipment, sited near and used in conjunction with a designated radiocommunications facility, up to 3 metres high and with a base area no more than 2 square metres of neutral colour matched to background – or colour agreed in writing between carrier and relevant Local Government; and
- Size of solar panels in rural areas used to power facilities in rural areas to be increased from 7.5 square metres to 12.5 square metres.

The general comment by ALGA is that these proposals all seem to emanate from and reflect the interests of carriers. There is a series of assumptions that these are only “minor” changes to the LIFD and a subjective opinion on whether they would be “less intrusive” or have “minor impact”. For example, there is little strong argument as to why solar panels of 7.5m are inadequate and why they need to virtually double in size to be effective. Panels of such size should not necessarily be regarded as “low impact”.

ALGA’s members believe that some of these measures would have a significant impact, and that as a general principle, any facility or activity which has an impact on a Local Government structure should be assessed by Local Government. Whether the impact would be “minimal” or “minor” should be assessed on a case by case basis.

ALGA believes further research needs to be conducted into each of these suggestions and that before any become incorporated into LIFD, the assertions of carriers need to be quantified and balanced with responsible planning and development assessment processes.

13. Length of trench that can be open to install conduit or cable

This proposed amendment would allow the amount of trench open at the one time to be increased from 100 metres to 200 metres under LIFD.

ALGA has reinforced in past submissions that advance notification and forward planning is best practice in commencing telecommunications activities. A more transparent and proactive approach to forward planning would enhance consultation and collaboration opportunities. This in turn allows Local Government to plan for road closures, traffic management, signage, notices to residents etc. Feedback from our members is that increasing the trenching limit to 200 metres causes substantial public inconvenience and is undesirable in residential areas, particularly those areas with high population densities.

The Local Government Association of South Australia has received several representations from councils on issue of open trenches, in particular lengthy and poor reinstatement. The Local Government Association of South Australia strenuously opposes the proposal to increase trench length to 200 metres.

14. Cable and conduit installation on or under bridges

This proposed amendment would allow carriers to install cable and conduit under bridges as low impact facilities, including installing cable within existing conduits on bridges. Telecommunications providers have argued that seeking agreement of relevant transport agencies delays the deployment of conduit and cabling.

This proposal has caused serious concerns to local government across the country. Bridges are complex structures and any alteration may have significant impacts on the safety and function of the structure, with potential financial and legal consequences. State and Territory Associations strongly object to any reclassification of bridges as a low impact facility. The functional integrity of bridges must be the paramount consideration.

The Municipal Association of Victoria has advised that East Gippsland Shire Council has expressed considerable concern about this issue, with the council having responsibility for 208 vehicular bridges and 26 pedestrian bridges.

15. Volume restrictions on co-located facilities

This proposed amendment would remove the current volume restriction on adding a facility to an existing facility – (eg. tower) or public utility structure (eg. road sign, street lamp, water tank). ALGA's position is that while supportive of adding facilities to an existing facility (supporting co-location and avoiding demand for additional towers being built), if a facility is added to a Local Government structure, this should be subject to Local Government approval. Although carriers would be required under the amendment to act in accordance with "good engineering practice", this self-regulation does not ensure that structural integrity and public safety are met, nor address urban design considerations.

18. LAAN objection periods

This proposed amendment would change objection periods in the Telecommunications Code from 10 business days to 5 business days from the receipt of the notice for all low impact facility installation and all maintenance activities. ALGA restates its position, that an objection period of 5 business days for councils is inadequate. ALGA consulted its members in 2011 in preparing a submission to the Draft Industry Code for Mobile Phone Base Station Deployment, undertaken by the Communications Alliance. As a result of ALGA's representations, the proposed 5 day comment period was extended to 10 business days.

Feedback from councils at the time was that the 5 business day comment period for councils is inadequate and should be extended to 10 business days. In order to respond to draft proposals, councils need to inspect the site, possibly consult with neighbouring residents and prepare a written response. Depending on council workloads and the level of development and construction activity, staff are not always immediately available to carry out these duties.

Carriers have asked for the objection period to end 5 business days after notice is given, to ensure they receive objections at least 5 business days before planned land entry activities. Even if carriers provide 20 business days' notice, the objection period under the amendment will still be 5 business days from receipt of the notice.

ALGA maintains that the 5 day period is insufficient time to do the required work to respond to the proposal. We recommend further consultation is undertaken on reasonable time frames and procedures, and that until then the 10 business day objection period remain in operation. Councils continue to raise concerns over the Low Impact Facilities Determination, specifically adequate consultation with local government, as well as adequate remediation after work has concluded. ALGA's National General Assembly continues to receive motions from councils expressing concern about the LIFD.

21. Allowing some types of poles to be low-impact facilities

This proposal to specify some poles up to 12 metres high and 500mm in diameter as low impact facilities in all types of areas, is totally unacceptable to Local Government. All poles need to be assessed and approved as they could potentially pose safety hazard and interfere with future planned upgrades of facilities. There should be adequate consultation on pole placement to ensure the safe function of a road or transport corridor. The rationale given is that underground cabling would be "more expensive" and planning consent would "increase costs and delay". Local government does not accept the argument that cost is the most important (or sole) consideration. Including 12 metre poles as low impact facilities would remove any incentive for carriers to consider underground cabling as an alternative, which may be assessed as having visual, functional and safety benefits which counterbalance the initial up-front cost.

The positioning of poles or facilities on Local Government land should always be subject to the approval of council. Telecommunications infrastructure could cause obstructions or interfere with the present and future functionality of the land or facility and may constitute a safety hazard and should always be assessed.

22. Portable temporary communications facilities

Carriers would like to install temporary facilities (COWs SatCOWs and MEOWs) using carrier powers and immunities – during maintenance; construction or installation of replacement facilities; at sporting events; at festivals and during emergencies. Currently in NSW and Victoria, these may be installed

under state planning laws in limited circumstances. The site must be left in a similar condition to what it was prior to the installation.

ALGA is of the view that portable temporary communications equipment should be exempt from state and territory planning and council approvals only in cases of emergency. In all other cases, it should be subject to approval to ensure there is no interference with other infrastructure or services, and no increase in the local risk profile.

23. Replacement mobile towers

It is proposed that carriers would be able to install replacement towers within 20 metres of the original tower, and that carriers would be required to decommission the original tower within 12 weeks. Currently replacement towers need to be installed in the same location. The rationale is that this proposal would allow the carrier to maintain coverage and service for customers and avoid having to seek approval for portable communications equipment.

Feedback from ALGA's members is that this proposal is unacceptable. A tower proposed at a site other than the original site should be required to be assessed and approved in the same way as a new tower.

Towers in road reserves have consequences for road managers. Land owners and occupants and the community all have a right to consider the merits of the new site, given the potential environmental, heritage or planning consequences. Structural integrity, legal liability and safety also need to be assessed and ensured.

24. Tower height extensions

Carriers wish to be able to extend existing towers by up to 10 metres in commercial, industrial and rural areas without the need for state and territory planning approvals. While ALGA supports co-location of facilities, and adding facilities to an existing facility, if an extension of tower is added to a Local Government structure, this should be subject to Local Government assessment and approval. Local Government's planning and assessment role is designed to ensure that the strategic and local planning objectives are respected, whilst also considering the public safety, heritage, urban design and infrastructure needs of the community are satisfied. Assuming that the original tower would have been subject to local government consent (including consideration of the visual impacts of that tower), allowing carriers to add another 10 metres, effectively free of planning consent, renders the original visual assessment for the tower worthless.

Conclusion

The majority of the proposals put forward in the consultation paper are driven by the desire of carriers to speed up their installation processes, avoid delays associated with the planning process and reduce costs. ALGA and the State and Territory Associations believe that many of these proposed changes, to

reduce or eliminate oversight, have the potential for adverse consequences – in terms of structural integrity, safety, urban design and interference with other infrastructure.

Strategic and local plans and planning legislation exist for a reason. Insufficient justification and evidence has been provided to support many of the potential amendments in the consultation paper.

ALGA and member Associations believe that some of these measures would have a significant impact, and that as a general principle, any facility or activity which has an impact on a Local Government structure, should be assessed by Local Government. Whether the impact would be “minimal” or “minor” and what level of risk may be generated, can be assessed only on a case by case basis.

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