TELSTRA CORPORATION LIMITED

Possible amendments to telecommunications carrier powers and immunities

Public Submission

28 July 2017
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EXECUTIVE SUMMARY

Telstra welcomes the opportunity to comment on the proposals in The Department of Communication and the Arts’ Consultation Paper (dated June 2017) on “Possible amendments to the telecommunications carrier powers and immunities”.

Telstra supports all of the 24 proposed amendments to the Telecommunications (Low Impact Facilities) Determination 1997 (“LIFD”), the Telecommunications Code of Practice 1997 (“Tel Code”), and the Telecommunications Act 1997 (“Act”), subject to a few suggested improvements as outlined in this submission.

In addition to the proposed amendments we have suggested three other changes for consideration as set out in section 5 of this submission. These additional proposals cover:

- Applying statutory immunity to telecommunications pit and pipe facilities that are transferred to a carrier from another party.
- Providing clarity that carriers hold primary responsibility for management of health and safety risks for carrier activities pursuant to Schedule 3 of the Act.
- Providing clarity that the provisions under Schedule 3 in the Act take precedence over other Federal legislation where there is no conflict.

During the twenty years since the commencement of the land and facilities access regime covered by these three instruments, there have been many changes in community demand for communications, technological advances and the evolution of Government policy. It is in the context of these developments that Telstra supports the need for the proposed amendments.

Many of the proposed amendments will be required for the timely and efficient rollout of fixed line and wireless network infrastructure to support future 5G mobile and Internet of Things (IoT) services. We believe these services will re-shape the Australian economy to drive significant productivity improvements and other benefits. So it is important that carriers are able to meet the ever-increasing demands of evolving technologies while seeking to minimise any adverse impact on visual amenity and public safety. For example, the amendments which address the increase in protrusions, shrouding, tower heights and the clarification on heritage restrictions will result in the avoidance of an unnecessary proliferation of new towers in cities, which will be of benefit to communities. The increases in the size of solar panel arrays will provide opportunities to better support improving mobile coverage in remote locations, and our additional amendment to remove the conflict with the Federal Airports Act will assist in the fast-tracking of enhanced services to these major transport hubs.

The remainder of this submission sets out our response to the questions posed by the Department for each of the proposed amendments, and also outlines the three additional amendments that we are proposing. Section 1 considers the amendments to the LIFD, section 2 considers the amendments to the Tel Code, section 3 considers the amendments to the Act, and section 4 considers the three additional proposals from Telstra. For ease of reference, we have adopted the numbering in the Consultation Paper for the 24 proposals.
01 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?
Telstra supports this amendment as it will remove confusion in some sectors where shared rooftops are considered to be “Co-location” and subject to volumetric limitations. This amendment adequately addresses the requirements of the telecommunications industry.

2. Local government heritage overlays

2.1 Are there any issues with this clarification in relation to local government heritage overlays?
Telstra generally supports this amendment as it will assist in sustainably maintaining community access to carrier services while ensuring heritage values are preserved. However, Telstra makes the following suggestion about the legislation:

Consultation Paper suggested wording:

“(7A) A heritage overlay or other kind of heritage map list, schedule or other document (however described) relating to heritage under a local government by-law, rule or planning instrument or scheme is not a register relating to heritage or conservation for the purposes of subsection (7).”

Telstra is concerned that the proposed wording does not differentiate between individual properties listed within the local planning instruments, and heritage areas within local planning instruments to ensure preservation of heritage values.

Telstra suggests that the wording is revised to ensure consideration of individual properties of heritage significance under local planning instruments. Only heritage controls that relate to an area or precinct of heritage significance within a local planning instrument should be excluded from Areas of Environmental significance under subsection (7).

A suggested solution is to delete the proposed (7A) and amend the existing (7) as follows:

“(7) An area is an area of environmental significance if, under a law of the Commonwealth, State or a Territory, it consists of a place, building or thing that is entered in a register relating to heritage conservation (but excluding any place, building or thing that is entered only in a register relating to heritage conservation under a town planning law or scheme or instrument as part of heritage protection for a precinct or area, and where the place, building or thing is not otherwise individually identified in the register).”

This suggested drafting would have the benefit of excluding local town planning heritage precinct/area controls from an “area of environmental significance” but still including places in an “area of environmental significance” where a State Heritage list or the National Heritage List protects an area/precinct. Examples of this include the entire City of Broken Hill which is included in the National Heritage List and all of St Kilda Road in Melbourne which is listed as a precinct under the Heritage Act 1995 (Vic). Precincts such as these, which have a higher level of heritage protection, would still be considered “areas of environmental significance”.

Su Submission res — Possible amendments to telecommunications powers and immunities
3. **Radio shrouds as an ancillary facility**

Telstra generally supports this amendment as it will assist in improving public visual amenity by encouraging carriers to install shrouds around facilities.

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? (LIFD, Part 3, 3.1(4)).**

The specification of radio shrouds as an ancillary facility will allow for ease of installation thereby promoting a reduction of impacts on visual amenity. This also allows some flexibility in the design of radio shrouds to best suit the environment they are installed in. Telstra suggests the following change to the drafting to ensure there will be flexibility to best suit the site’s environment:

“(4) A facility that is ancillary to a facility covered by sub-section (1) is also a low-impact facility only if it is … (aa) a shroud installed over, on or around the a low-impact facility for the purpose of, where the shroud is intended to minimising the visual amenity impact of the low-impact facility and is colour matched to its background”.

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?**

Preference is given to radio shrouds being considered an ancillary activity by nature of its function, not size or dimension.

4. **Size of radiocommunications and satellite dishes**

Telstra supports this amendment as it will increase the reliability and capacity of the industry’s transmission networks with a minor increase in visual impact which is restricted to industrial and rural areas.

This amendment will enhance the availability of the network in communities where optical fibre is not available and alternative technologies pose higher impacts on environmental values.

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)?**

While Telstra acknowledges there will be a minimal increase in visual impact, this will be in industrial and rural areas with negligible impacts on the public amenity and land use therefore an acceptable outcome.

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)?**

Telstra is not aware of any issues.

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

Telstra supports the increase in height as a necessary proactive measure to ensure compliance with the anticipated future amendments being made to the ARPANSA Standard. This ensures public safety when accessing a rooftop installation by ensuring the public are not subjected to EME above the safe threshold in the future amended standard. It also has the benefit of extending public coverage from the facility.

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

Telstra supports this amendment subject to comments in 5.2 below.
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?

Telstra considers that a 5 metre protrusion in industrial and rural locations should be sufficient for current technologies, but in order to future proof the LIFD Telstra would support an increase to 7.5 metres in these areas. By increasing the antenna height, this will reduce proliferation of new vertical infrastructure and minimise visual amenity impacts from a broader community perspective. A protrusion of more than 5 metres in these locations would also assist in extending coverage from facilities.

Telstra acknowledges that changes may be required to the Act to facilitate the statutory right to increase protrusion height beyond 5m and is happy to provide the Department of Communication and the Arts with proposed legislative drafting to support such an amendment.

6. Use of omnidirectional antennas in residential and commercial areas

Telstra supports this amendment as it will permit the installation of less visually obtrusive facilities in locations where panel antennas are not required due to low capacity demands.

6.1 Are there any issues with permitting omnidirectional antennas in residential and commercial areas, in addition to industrial and rural areas?

No, as omnidirectional antennas will predominantly be deployed in rural, country and remote locations which are zoned residential or commercial. The proposed amendment will be helpful for supporting the efficient implementation of the Federal Government’s Regional Blackspot program in regional and remote Australia.

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

Telstra does not believe the approach as amended will raise any issues, subject to its comment in response to 7.2 below.

7.2 Are the proposed dimensions for these facilities appropriate?

Telstra considers the dimensions as proposed in the Consultation Paper to be an improvement as they are more likely to capture the various types of small equipment without making specific reference to each variety.

Telstra proposes an additional amendment to these items (set out below). Telstra’s amended version below focusses on the antenna, as Telstra considers that the ability to install a transmitter unit or cabinet already exists in the LIFD under Part 3, item 5. Further, prescriptive equipment housing dimensions may constrain evolving technology for the radio communications antennas.

Telstra’s considers there is no need to include the proposed item 6A as it may have the potential to confuse, and that the proposed item 6 (as amended below) would be sufficient.

<table>
<thead>
<tr>
<th>6</th>
<th>Microcell installation with:</th>
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<tr>
<td></td>
<td>(a) a cabinet of not more than 1 cubic metre in volume; and</td>
</tr>
<tr>
<td></td>
<td>(b) a separate antenna not more than 1 metre long.</td>
</tr>
</tbody>
</table>

Radiocommunications facility:

- Residential
- Commercial
- Industrial
- Rural
6A Radiocommunications facility:
   (a) with a transmitter unit no more than 0.03 cubic metres in volume, attached to an existing structure; and
   (b) each external antenna is not more than 1.2 metres long.

<table>
<thead>
<tr>
<th>Residential</th>
<th>Commercial</th>
<th>Industrial</th>
<th>Rural</th>
</tr>
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8. **Equipment installed inside a non-residential structure in residential areas**

Telstra supports this amendment as it will assist in reducing the impact on visual amenity from rooftop facilities in situations where equipment can be installed in the building plant rooms on roof 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, Telstra agrees with this proposed amendment in general. Telstra considers that some minor drafting changes would assist to clarify the proposed item 8A, noting that it is to be applied to equipment where the structure or building is “not under applicable State/Territory planning laws for residential occupancy or residential use”. Item 8A will only apply in Residential Areas. In many State/Territory planning laws, it is possible that a building in a residential zone can be used for residential purposes as of right, with no planning permission required. Accordingly, the proposed drafting in the Consultation Paper could be read widely to rule out all buildings in that residential zone as each building could be used as of right for residential purposes. We do not think this is intended, and the drafting below would instead capture equipment being installed in structures or buildings which are not at the time of installation being used for residential purposes:

“Equipment (including an antenna concealed in another structure) installed inside a structure, where:
   (a) the structure is:
      i. a stand-alone structure; or
      ii. attached to an existing structure or building; and
   (b) the structure or building (as the case may be) is not, used for residential purposes under the applicable State/Territory planning laws, for residential occupancy or residential use.”

9. **Tower extensions in commercial areas**

Telstra supports this amendment as it will reduce the instances of additional facility deployment that is often delayed by the development application process, and it will also enable better use of existing telecommunications facilities to support multi-carrier colocation. This should assist to reduce the proliferation of new vertical infrastructure and minimise visual amenity impacts from a broader community perspective.
9.1 Are there any issues permitting tower height extensions of up to five metres in commercial areas?
No. It promotes the efficient use of existing infrastructure and will allow accelerated rollout of new technologies.

10. Radiocommunications lens antennas

10.1 Is lens antenna the best term to describe this type of antenna?
Telstra supports the use of the term lens antenna but also suggests that this provision be expanded to include flat panel and beam steering array antennas. These additional antennas would be installed flush against existing structures with minimal protrusions and could be accommodated within the dimensions and protrusions proposed for Lens antennas.

10.2 Are 4 cubic metres in volume and 5 metres of protrusion from structures appropriate?
Yes, these dimensions are appropriate.

10.3 Should this type of antenna be allowed in all areas, or restricted to only industrial and rural areas?
Yes, this type of antenna will support future network and accessibility developments which will also be of benefit to customers in Commercial and Residential areas.

Telstra suggests that the proposed amendment of the LIFD be changed as follows:

Current suggested amendment in the Consultation Paper

<table>
<thead>
<tr>
<th>10</th>
<th>Radiocommunications lens antenna:</th>
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<tbody>
<tr>
<td>10</td>
<td>(a) the substantive volume of which is not more than 4 cubic metres; and</td>
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<tr>
<td>10</td>
<td>(b) either:</td>
</tr>
<tr>
<td>10</td>
<td>(i) colour-matched to its background; or</td>
</tr>
<tr>
<td>10</td>
<td>(ii) in a colour agreed in writing between the carrier and the relevant local government authority; and</td>
</tr>
<tr>
<td>10</td>
<td>(c) if attached to a supporting structure, the total protrusion from the structure is not more than 5 metres.</td>
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Telstra's suggested amendments:

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<th>10</th>
<th>Radiocommunications lens antenna, flat panel and beam steering array antennas:</th>
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<tr>
<td>10</td>
<td>(a) the substantive volume of which is not more than 4 cubic metres; and</td>
</tr>
<tr>
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</tr>
<tr>
<td>10</td>
<td>(i) colour-matched to its background; or</td>
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<tr>
<td>10</td>
<td>(c) if attached to a supporting structure, the total protrusion from the structure is not more than 5 metres.</td>
</tr>
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11. **Cabinets for tower equipment**
Telstra generally supports this amendment, however in Telstra’s view, consideration needs to be given to whether the statutory right to install such a facility already exists under the LIFD under LIFD 1997 Part 3, item no 5.

Further, prescriptive equipment housing sizes may constrain evolving technology for the radiocommunications facilities.

11.1 **Are there any issues with the proposed new cabinet type?**
No, subject to the previous comments above.

12. **Size of solar panels used to power telecommunications facilities**
Telstra supports this amendment as it will increase the reliability of Telstra network facilities located in rural locations where a mains power connection is not available. Due to the rural and remote nature of these facilities, an increase in footprint of the solar panels will not result in an adverse visual impact. However, as explained below, Telstra would like to suggest the solar panel capacity be increased to 25 square metres in order to cater for any potential for increases in power demand in rural and remote areas in the future.

12.1 **Are there any issues with permitting 12.5 square metre solar panels for telecommunications facilities in rural areas?**
Telstra uses solar panels in rural areas where mains power is not readily available. Telstra proposes that the LIFD be amended to increase the maximum base size of a solar panel to 25 square metres for the following reasons:

(a) The power generated through low impact solar panels is no longer sufficient to provide the power now required to supply current generation radiocommunications facilities;

(b) In the rural and remote locations where solar power is required, the visual impact from the installation of a larger solar panel would be relatively low;

(c) Obtaining the State planning approvals to install a solar array of the necessary size has the effect of delaying completion of projects and increasing costs, in circumstances where, in Telstra’s experience, the community is very supportive of such installations.

(d) It supports Telstra and the Commonwealth Government’s objectives to reduce carbon emissions.

(e) By allowing the installation of larger frames the infrastructure is already in place for any future augmentation of solar panels as rural communities needs evolve over time.

13. **Length 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?**
Telstra supports this amendment.

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?**
Yes, it is appropriate.
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?
Telstra supports the installation of new conduit and cable on bridges and offers some further general comments below.

Telstra agrees that the installation of a conduit and cabling on a bridge should be within the definition of a low impact facility in all areas (other than in an area of environmental significance) for the following reasons:

(a) Having to apply a different approval regime for bridge crossings is extremely inefficient. Telstra agrees that it is necessary for carriers to engage with bridge owners as to the practicalities of the proposed installation, as is currently provided for in the Act. However, the requirement to obtain the bridge owner's consent to access the bridge is contrary to the aim of efficient and environmentally sensitive network deployment.

(b) Telstra often experiences long delays in obtaining the necessary bridge owner consent and, at times, is asked to pay a considerable sum for that consent;

(c) There is no community advantage to the exclusion of the installation of a conduit and cabling on a bridge from the LIFD;

(d) The community is disadvantaged by the delay caused to the completion of an otherwise simple infrastructure deployment project while Telstra manages bridge crossing approvals; and

(e) The inclusion of the installation of conduits on or under bridges in the LIFD appears to have been unintentionally omitted by Parliament at the time the Act was enacted.

Telstra’s view is that the current legislation already allows for the installation of certain low impact facilities on bridges, such as low impact radio facilities under LIFD Part 1 items 2, 3 and 4 and additional cable being hauled through existing ducts that are attached to a bridge (in specific circumstances) under Schedule 3 of the Act Division 4, clause 3 (e) where clause (6) (a) & (b) (ii) and (c) are satisfied.

In consideration of this, the proposed amendment will provide further clarification in order to remove any ambiguity and provide a consistent network infrastructure outcome under the LIFD with respect to the installation of low impact facilities on bridges.

15. Volume restrictions on co-located facilities
Telstra supports this amendment as it will permit the more efficient use of the existing structural capacity of its poles and towers.

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. It promotes the better use of existing facilities.

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, on balance the proposed increase in volume to an original facility or public utility structure is considered a better community outcome, in lieu of an increase in new vertical
infrastructure in residential areas.

15.3 Is another volume limit more appropriate in commercial or residential areas?
   No. The proposed amendment is supported.

15.4 Should alternative arrangements for co-located facilities be developed in the LIFD?
   No. The proposed amendment is supported.

16. Updates to environmental legislation references in the LIFD
16.1 Are there any issues with the proposed updates?
   No, Telstra supports this amendment.

16.2 Are there any further suggestions for updates to terms and references in the LIFD?
   No, Telstra has not identified any issues.
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, Telstra supports this amendment.

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, Telstra supports this amendment.

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, Telstra supports this amendment.

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?
Telstra does not believe there will be any issues with this proposal. There are instances where an objector does not actively engage in the resolution of objections and/or seeks immediate referral to the TIO. In these instances it is appropriate that where an objection cannot be resolved within the mandated timeframe that the objection be promptly referred to the TIO.
The proposed amendment is supported as it provides a balanced objection resolution pathway for both the landowner and carrier.

20. Updates to references in the Tel Code
20.1 Are there any issues with the proposed changes?
No, Telstra supports this amendment.

20.2 Are there any further suggestions for updates to the Tel Code?
Telstra has no further suggestions in relation to updates of the Tel Code.
03 Amendments to the Telecommunications Act

Telstra supports the proposed amendments to the Act as described in the Consultation Paper, but notes that detailed legislative amendments have not yet been drafted. The Consultation Paper states that it is general practice to consult on legislative changes if they are proposed, and Telstra would appreciate the opportunity to review any proposed draft legislation addressing these matters in the future.

21. **Allowing some types of poles to be low-impact facilities**
Telstra supports the proposed amendment. However, bearing in mind the size and use of this infrastructure it is unlikely to be deployed in populated areas where existing utilities services are available (power and fibre). Accordingly it is recommended that these facilities be limited to rural areas only.

21.1 **Is it reasonable for poles in rural areas for telecommunications and electricity cabling for telecommunications networks to be low-impact facilities?**
Consideration needs to be given to the size and use of this infrastructure as it is unlikely to be deployed in populated areas where existing utilities services are available (power and fibre). Accordingly it is recommended that these facilities be limited to rural areas only.

21.2 **Should low-impact facility poles be allowed in other areas, or be restricted to rural areas?**
Industrial areas and locations may be suitable, where underground construction is not economically feasible and colocation opportunities are not available.

21.3 **Is the proposed size restriction of up to 12 metres high with a diameter of up to 500mm suitable?**
Yes, Telstra supports this size restriction.

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?**
Yes, the existing notification and objection processes are sufficient.

22. **Portable temporary communications facilities**
Telstra supports this proposed amendment. The community now has a heightened expectation that mobile services will be available at large cultural and sporting events, where increased capacity is required infrequently but perhaps on an annual basis. National consistency is desirable to replace inconsistent State exemptions.

22.1 **Are there any issues with making portable temporary communications equipment exempt from state and territory planning approvals under certain conditions?**
No, it is a desirable outcome which is also expected to be supported by Local Governments and the community.

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?**
Telstra suggests that the timeframe for the removal of the portable temporary communications facility be within 30 days of the completion of its required use.

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. MEOWS are usually required to restore connectivity after a significant weather event or disaster.
22.4 Are there any suggestions for appropriate conditions for the installation of MEOWs if the maintenance powers are amended?

The MEOW is to be removed only after the restoration of permanent services is completed. E.g. the building of a new exchange after a fire.

Telstra acknowledges that changes may be required to the Code and Act to clarify instances of proactive and reactive circumstances required to provide portable temporary communications facilities. Telstra is happy to provide the Department of Communication and the Arts with proposed legislative drafting to support such amendments, taking into account the current emergency works statutory provisions.

23. Replacement mobile towers

Telstra supports the proposed amendment. Currently carriers are required to install replacement facilities in the identical location as the current facility. It is not possible to achieve this without a loss of service or the installation of a temporary facility (where technically feasible).

It is more logical to install the new facility prior to the removal of the redundant facility to ensure services are maintained however a reasonable distance between the facilities is required to reduce the risks to personnel, and physical interference during the construction period.

23.1 Is the proposal reasonable?

In some instances yes where structures are being replaced, subject to further comments in 23.2.

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

Vertical telecommunications structures come in various heights, footprints and locations. Whilst the 20m proposal may be suitable for freestanding structures (such as poles), it is unlikely that such a restriction would accommodate the replacement of a larger guyed masts (for example, 100 metres height) in rural and remote locations.

In relation to the replacement structures footprint, in our view, it is an appropriate construction of the replacement power in clause 7(3)(d), which clearly contemplates the swap out of towers (as demonstrated by clause 7(5)(b) which sets out height and volume rules for tower replacement), that carriers have the ability to give effect to the power contained in that clause.

In other words, if it is not operationally possible to build a replacement tower in the exact same footprint as the original tower (as doing so would mean that all services may be shut down for the construction period and residents and businesses would be without any phone coverage for a period of time), then it is unlikely to have been Parliament’s intention that the requirement for the replacement facility to be in the ‘original location’ meant ‘the identical footprint’.

The construction rule in s15AA of the Acts Interpretation Act should be applied, i.e. that the ‘interpretation that would best achieve the purpose or object of the Act is to be preferred to each other interpretation’.

The main object of the Act is stated in section 3 of that Act:

*to provide a regulatory framework that promotes:*
(a) the long-term interests of end-users of carriage services or of services provided by means of carriage services; and

(b) the efficiency and international competitiveness of the Australian telecommunications industry; and

(c) the availability of accessible and affordable carriage services that enhance the welfare of Australians.

When considering these objects above, it is our view that the continued supply of carriage services to local users while a new tower is being built will best achieve (a) the long term interests of the end users of the carriage service, and (c) the availability and accessibility of carriage services. It is not in the long term interests of end users, and it would not enhance the welfare of Australians, to be subject to random and long term serious failure of their mobile (and other) services due to carriers turning off and removing any pieces of network (towers, poles, probably even cabling) before installing the replacement equipment in order to meet a strict interpretation of the requirement to install replacement facilities in the ‘exact same footprint as the original facility’, instead of ‘as close as operationally and reasonably possible to the original location’

Telstra acknowledges that changes may be required to the Act to clarify matters relating to replacement mast location and is happy to provide the Department of Communication and the Arts with proposed legislative drafting to support such an amendment

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

24. Tower height extensions  
Telstra supports this proposed amendment. It will enhance the opportunities to deploy new technologies and additional carriers on existing facilities while reducing the proliferation of new structures in the surrounding area. It removes the cost and delay in securing Development approvals and promotes the use of existing infrastructure.

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?  
Yes
04 Additional amendments proposed by Telstra

4.1. Telstra New Developments (Tenure for A3PPP)

The Australian Government Policy ‘Telecommunications infrastructure in new developments – A new approach to competition’ (Policy), dated 1 March 2015, states on pages 17 and 27:

- “The Government proposes to amend Schedule 3 of the Telecommunications Act 1997 to make it clear carrier powers and immunities (e.g. in relation to installation and maintenance) apply to pit and pipe and any other network infrastructure transferred to carriers just as they apply to similar infrastructure built by carriers themselves.”
- “The Government will review Part 20A and Schedule 3 of the Telecommunications Act 1997 with a view to amending them to … ensure that network infrastructure transferred to a carrier attracts the same rights and immunities under Schedule 3 as if installed by a carrier.”

An installation in accordance with Division 3 provides a carrier with ‘statutory tenure’ (an immunity from the laws of trespass) with respect to the facility installed. This tenure is certain, perpetual, does not need to be registered and the carrier is not required to own the land on which the facility has been installed, or have any access arrangements in place.

Currently, when a carrier acquires pit and pipe (installed by a developer) from a developer, a carrier does not obtain the statutory tenure afforded from an installation in accordance with Division 3 of Schedule 3. As a result:

- A carrier will acquire tenure which is significantly inferior to the statutory tenure obtained under Schedule 3 such as a mere contractual licence to access.
- If a carrier would like to obtain more secure tenure (such as an easement), it will need to obtain all of the relevant consents and approvals required for such tenure. This can be expected to involve both time and expense and is inconsistent with the intent of the Act and the Policy. There is also a risk that a carrier will be unable to achieve such consents.
- There may be unexpected uncertainties about the priority of rights between utilities sharing the same parcel of land.
- Confusion about carrier obligations may arise, such as whether the compensation provisions in Schedule 3 apply.

Accordingly we ask that Schedule 3 of the Act be amended as proposed in the aforementioned policy and we suggest some draft wording for this amendment below.

New clause 47A to be inserted as follows:

“Facilities Deemed under Schedule 3

A low-impact facility that has been acquired by or transferred to a carrier is deemed to have been installed by that carrier under this Schedule 3”.

4.2. OH&S liabilities

Telstra proposes an amendment to the Act to clarify that carriers hold primary responsibility for management of health and safety risks for workers that arise from carrier activities. The need for this proposed amendment is due to disputes occurring between carriers and landowners (for example, operators of mines) where the landowner seeks to direct safety aspects of the carrier activities. In those circumstances, where the carrier activities are not part of the business or undertaking of the
landowner, the landowner does not owe a duty of care to the carrier’s workers pursuant to OHS/WHS laws (aside from ensuring safe access and exist to the land and that their own activities do not constitute a risk to the carrier’s workers).

Telstra submits that carriers would be assisted by a reference in the Act to carriers having the primary responsibility for health and safety of its workers, and suggest the following drafting as a new clause 10(2) under Schedule 3 of the Act:

“A carrier holds primary responsibility for the management and minimisation of health, safety and environmental risks that may arise from the performance of an activity covered by Division 2, 3 or 4.

In discharging its duties in accordance with relevant occupational health and safety and environmental laws, a carrier must, so far as reasonably practicable, consult, co-ordinate activities with other persons, including land owners, where those persons hold a duty in relation to that same activity”.

4.3. Telco Act Interplay with parallel Federal Legislation

We understand the provisions under Schedule 3 in the Act take precedence over other Federal legislation where there is no conflict (e.g., statutory tenure under the Telecommunications Act versus no statutory pre-requisite under the Federal Airports Act to enter into a lease or licence). We propose that an amendment be included in Schedule 3 to remove any uncertainty about this precedence.

This amendment is primarily aimed at maintaining a carrier’s statutory tenure under the Telecommunications Act when interacting with Federal airport locations. In particular, while under the Airports Act 1996 (Cth) there are certain statutory pre-requisites/approvals required to be obtained by Telstra undertaking low impact works at Federal airports, this does not include the requirement for Telstra to pay commercial terms for low impact infrastructure occupancy.

Here is the DRAFT wording of an amendment to add a new clause 52(2):

Schedule 3 Extract

52 Commonwealth laws not displaced

(1) Divisions 2, 3 and 4 do not authorise a carrier to engage in an activity contrary to the requirements of another law of the Commonwealth.

(2) It is the intent of the Parliament that a carrier’s rights under Schedule 3 are maintained, where not contrary with the requirements of another law of the Commonwealth.