

Submission to the Australian Government Consultation on Possible Amendments to Telecommunications Carrier Powers and Immunities

July 2017

Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW thanks the Australian Government's Department of Communications and the Arts for the opportunity to comment on proposed amendments to the powers and immunities of telecommunications carriers under the *Telecommunications (Low-impact Facilities) Determination 1997*, the *Telecommunications Code of Practice 1997* and potentially, schedule 3 of the *Telecommunications Act (Cwth) 1997*.

General comments

LGNSW notes that the proposed amendments are intended to:

- Clarify the operation of existing powers and immunities (e.g. heritage overlays);
- Allow increases in the size of existing facilities (e.g. solar cells), new types of facilities (e.g. lens antennas) and some types of facilities in new areas (e.g. omnidirectional antennas);
- Alter landowner and occupier notification and objection timeframes and processes; and
- Enable temporary or replacement towers or extensions to be installed in some circumstances.

While LGNSW appreciates that carriers seek to efficiently deploy modern and effective technologies and minimise any administrative burden, this should not be at the expense of relevant planning, consultation and safety assessment provisions. Nor should it compromise the integrity of council infrastructure, particularly water supply and sewerage facilities, or impede councils' ability to safely operate and maintain such infrastructure.

The proposed amendments would further expand the powers and immunities of telecommunications carriers. The principal motive of the proposed amendments appears to be to speed up or circumvent approval processes and allow even greater access to public and private property and infrastructure facilities. LGNSW sees these changes as part of an ongoing push to broaden the powers of carriers by bowing to their commercial interests at the expense of other infrastructure owners and development control authorities, such as councils.

Councils continue to voice concerns about the Low Impact Facilities Determination (LIFD), and, in particular, inadequate consultation where facilities are being installed on council-owned property. Councils have a responsibility to assess developments which have the potential to impact their communities and employees. They also have unequivocal expectations that there are no adverse impacts where a carrier is seeking to install a telecommunications facility on council-owned land or assets.

Comments relating to land use planning and development control

Urban development assessment regulations exist to ensure the proponent's objectives are balanced against other considerations such as public safety, visual and other environmental impacts and to allow for community input.

LGNSW is concerned that the proposed amendments come at expense of relevant planning, consultation and safety assessment provisions including:

Local Government heritage overlays

NSW councils follow an extensive investigation and community engagement process under the provisions of the *Environmental Planning and Assessment Act (NSW) 1979* and other relevant legislation to identify and protect local heritage. These provisions should not be overridden by the LIFD. Giving unregulated access to telecommunications carriers within heritage precincts could adversely impact the integrity of the area. Carriers must be required, through a planning approval process, to demonstrate how the proposed facility respects the heritage precinct and can blend into the area.

Radio shrouds as an ancillary facility

While radio shrouds are a welcome addition designed to screen low impact facilities, councils are concerned that they may impact the structural integrity of the asset where they are installed e.g. a council-owned water reservoir. LGNSW therefore argues that radio shrouds should not be automatically exempt from council approval and should be listed as a distinct facility under the LIFD. As a general principle, any facility or activity which has an impact on a council-owned structure should be assessed by council. This is discussed in more detail in the last section of this submission.

Maximum heights of antenna protrusions on buildings or structures

As with radio shrouds, extensions to radio mounts on council-owned structures may compromise the integrity of the structure and LGNSW therefore argues that where located on council property, these must be subject to council approval.

Further, from a visual perspective, this is another example of diminishing the intent of 'low impact' regulations by extending the protrusion allowance from 3 to 5 metres above any building or structure. This additional height protrusion is not considered to be visually low impact and is definitely not acceptable in residential and other visually sensitive areas such as in natural or scenic settings.

Cable and conduit installation on or under bridges

The functional integrity of bridges is a fundamental concern for councils and other road infrastructure owners. The proposal to allow carriers to install cable and conduit under bridges as low impact facilities therefore raises serious concerns among councils. LGNSW objects to reclassification allowing cable and conduit installation on bridges to be recognised as low-impact.

Allowing some types of poles to be low-impact facilities

LGNSW opposes the proposal to specify some poles up to 12 metres high, as low impact facilities. All poles need to be assessed and approved through planning processes, as they could potentially pose safety hazards or interfere with future planned upgrades of facilities or infrastructure such as local roads. Poles or facilities located on council-owned land should always be subject to council approval.

LGNSW questions the rationale put forward to support the proposal to include 12 metre poles as low impact, i.e. that underground cabling would be "more expensive" and planning consent "would increase costs and delays". Costs should not be the predominant matter of consideration. There are important visual, functional and safety matters that need to be taken into account when considering the installation of poles and weighing up the option of poles against alternatives like underground cabling. Circumventing the planning assessment process by allowing 12 metre poles to be treated as low impact would jettison any such considerations. It would remove any incentive for carriers to consider whether underground

cabling is a preferable alternative. Further, there is nothing in this proposal to address the cumulative impact of multiple poles. While a single 12 metre pole may be considered by some as low impact, the likely scenario is that the National Broadband Network will install multiple poles, which LGNSW argues does not fall within the intent of 'low impact'.

Tower height extensions

LGNSW does not support the proposal to allow carriers to extend existing towers by up to 10 metres in commercial, industrial and rural areas without the need for planning approval. Assuming that the original tower would have been subject to planning consent (including an assessment of the visual impacts of that tower), allowing carriers to add another 10 metres, effectively free of any such assessment, renders the original visual assessment for the tower of little value. Any extension of a tower on council-owned property/assets in particular, must be subject to council assessment and approval.

Comments relating to water utility infrastructure

The proposed amendments are likely to exacerbate existing risks posed by carriers' powers to councils' drinking water supply infrastructure and their ability to provide safe drinking water at all times.

Local government in NSW plays an important role in the provision of water services to the community. In regional NSW, 89 council-owned and operated local water utilities provide water supply and sewerage services to 1.8 million people. Local water utilities generate over \$1.5 billion in annual revenue and hold total water supply and sewerage assets valued at around \$28 billion.

The location of telecommunications facilities on the assets of water utilities, particularly on or around drinking water reservoirs, poses a significant risk to the ability of water utilities to provide safe drinking water and thus protect public health. Penetrations on the roofs of reservoirs or other structural damage caused by the installation or presence of telecommunication facilities can result in the ingress of insects, rodents, birds and associated faecal matter and subsequent water contamination. The location of facilities and emission of electromagnetic radiation from such facilities can obstruct safe access to the water utility's infrastructure and prevent their employees from undertaking operational activities such as water quality monitoring, chemical dosing, regular surveillance of infrastructure integrity or maintenance works, which are critical to ensuring a safe drinking water supply.

In practice, we understand carriers tend to ignore section 8 of schedule 3 of the *Telecommunications Act (Cwth) 1997*, which requires them "to do as little damage as practicable" when inspecting land or installing and maintaining telecommunication facilities. For example, carriers often leave holes in roofs or install facilities on assets which do not have the structural capacity to carry such facilities.

Further, carriers typically choose not to apply section 11 of schedule 3 of the *Telecommunications Act (Cwth) 1997*. This section requires carriers to make reasonable efforts to enter into, and comply with, an agreement with a utility that makes provision for the manner in which the carrier will engage in an activity likely to affect the operations of the utility. Carriers usually merely notify the utility that they are accessing the utility's infrastructure and do not seek to consult or enter into any agreement. If carriers properly applied this section and undertook genuine consultation with water utilities, in many cases more appropriate infrastructure sites and facility locations could be identified that would both minimise water quality and water infrastructure risks and achieve desired telecommunications outcomes. Unfortunately, such consultation is not industry practice.

Any amendments to schedule 3 of the *Telecommunications Act (Cwth) 1997* and /or related instruments should be cognisant of, and not exacerbate, the risks to drinking water supply and public health already posed by the powers of carriers to install telecommunications facilities water utility infrastructure. However, the majority of the proposed amendments appear to increase risks further as they consider “taller”, “longer” or “larger area” equipment, trenching, shorter response times and increased site access.

More broadly, further consultation is required to address existing issues and establish a mechanism in the *Telecommunications Act (Cwth) 1997* to better balance the powers of telecommunication carriers with the ability of water utilities to operate, maintain and repair water supply infrastructure and the imperative to ensure the safety of drinking water at all times.

This should include consideration of making provision in the *Telecommunications Act (Cwth) 1997* to empower water utilities to refuse access to its infrastructure sites or direct that a telecommunications facility be removed if a water utility considers that the facility poses an unacceptable risk to public health or the safety of its employees.

Water Directorate submission

LGNSW also urges the Department to consider submissions made by the Water Directorate NSW and individual NSW councils. These submissions provide detailed, technical commentary and examples with respect to the impact of existing powers of carriers and the proposed amendments.

The Water Directorate is a membership organisation of councils in NSW that provide water supply and/or sewerage services. The Water Directorate has a high level of technical expertise in urban water service provision in regional NSW and detailed knowledge of the technical, operational and managerial challenges NSW councils’ local water utilities face. LGNSW works closely with the Water Directorate and is represented on the Directorate’s Executive Committee.

Conclusion

LGNSW hopes that its comments are of assistance and looks forward to continuing to contribute to achieving a better balance between the powers of telecommunication carriers and the interests of councils.

The Australian Local Government Association (ALGA), of which LGNSW is a member, has provided a comprehensive submission covering many areas of concern. LGNSW also supports the ALGA submission.

For further information on LGNSW’s submission, please contact, Sascha Moege, Senior Policy Officer on 9242 4045 or sascha.moege@lgnsw.org.au.