

Department of Infrastructure, Transport, Regional Development and Communications  
(Powers and Immunities Team)  
2 Phillip Law Street, Canberra ACT 2601  
GPO Box 2154 Canberra, ACT 2601  
Via email: [powersandimmunities@communications.gov.au](mailto:powersandimmunities@communications.gov.au)

8 April 2021

## **Further consultation on the proposed reforms to the Powers and Immunities**

### **Framework**

Thank you for the opportunity to respond to your email of 1 March 2020, notifying of the further work plan to implement powers and immunities framework reforms, and asking for feedback.

**ALGA has made submissions on these reforms in 2017 and 2020, expressing grave concerns about the continued expansion of telecommunications infrastructure which falls under the Low Impact Facilities Determination (LIFD) and which results in the erosion of local government's planning role and its ability to plan for the vision and future layout of its town and cities, in consultation with its communities.**

ALGA's position, expressed in both submissions, remains unchanged. Local Government's preference is for changes to powers and immunities for carriers to be expressed in regulation rather than a non-regulatory requirement, based on experience with carriers interpreting the rules as they see fit and the push by carriers over many years to roll out infrastructure outside the planning process.

The outcomes paper concludes the "majority of submissions preferred changes to the framework to be included in primary or subordinate legislation rather than in an industry code". ALGA fully supports proposed amendments to the Code of Practice to ensure carrier activities are monitored and enforced.

The outcomes paper states that "proposed amendments are not intended to solely benefit or burden a single sector – balancing the framework will require compromise from everyone." From our perspective, the proposals in Chapter 3 of the Consultation Paper to expand the LIFD, which cause concerns to local government, are all being implemented to improve the rollout of new networks, including 5G. Carriers have consistently argued the need for faster rollout, but this does not recognise the need to balance the rollout of telecommunications infrastructure with planning, environmental and safety issues. Faster rollout does not take into account the wider planning needs of towns and cities to avoid a plethora of unplanned, unregulated infrastructure which future generations will need to address.

**The rollout of 5G infrastructure will require a greater density of facilities, and the proliferation of 5G infrastructure remains a concern for local government.** Carriers generally act independently of each other to roll out their own infrastructure, which will further contribute to this proliferation. Where 5G infrastructure is installed/located on local government infrastructure, councils should have the power to approve both the location and installation. Councils should be involved in the deployment plans for 5G, to encourage cell sharing by carriers and to reduce the effects of uncoordinated cell deployment.

**Local government proposes that carriers should be required to provide details of proposed cell deployment on a whole-of-precinct basis (rather than one cell at a time) so that the cumulative effect of 5G infrastructure can be considered and assessed.** A more considered approach to rollout in the early stages of 5G can identify the best opportunities for co-location and achieving maximum coverage, as well as reducing the cost of the duplication of facilities. A coordinated pre-approved plan at precinct level, in built up areas, is proposed to reduce haphazard proliferation of 5G infrastructure. Local government should be involved in this process.

**Expansion of the LIFD, particularly for slim/smart poles is totally opposed by local government.** These are 12 metre structures which will, under LIFD, potentially be placed throughout cities and towns without the need for planning approval or safety assessment. Carriers admit there will be a high-density deployment of these poles and “that a development approval process for each smart pole renders deployment uneconomic”. They also argue that “smart poles would improve coverage and quality of service, while using a more discrete design”.

It is difficult to see how 12 metre poles can be classified as discrete. Over the years, carriers have consistently argued the need for faster, less regulated, more efficient rollout of their infrastructure. They also argue that the planning process slows down their rollout – but show little regard for the long-term impact of operating without proper planning. The outcomes paper states that smart poles will be “integral to the effective rollout of 5G and millimetre technologies”. ALGA believes that smart poles need proper planning assessment and placement, to ensure safety, structural integrity, heritage considerations and traffic implications, and so they do not become the ugly eyesores of the future. They should not be classed as a low impact facility.

**Finally, ALGA raises Telstra’s digital billboards as a strong example of the consequences of LIFD, and the desire of carriers to circumvent local planning requirements.**

Melbourne, Brisbane and Sydney councils combined to object to the rollout of payphones with large 190cm digital screens, arguing that new payphone cabinets were clearly designed to display advertising to maximum effect and were a means for Telstra to bypass local planning regulations and generate advertising revenue.

“The City [of Sydney] believes that Telstra is inappropriately exploiting its powers to install payphones under the Telecommunications Act to install large advertising panels together with 5G cells and other services without council guidance or permission.”

Telstra had argued that the question of whether a facility is low-impact “is to be assessed at the time the facility was installed and not at a later time” – since it planned to switch on the new cabinets on installation and restrict the display of advertising for 28 days. Having gained planning permission, Telstra planned to then display third-part commercial advertising.

A Federal Court ruling in favour of Telstra in March 2020 was overruled in November 2020 finding that Telstra payphones with large digital screens were not “low-impact facilities”.

The judgement said: “The whole of the evidence establishes that Telstra is seeking to install payphone cabinets that display commercial advertising.

“There is nothing in the evidence to suggest that Telstra would install the new payphone cabinets if it does not receive planning permission to display commercial advertising.”

ALGA view remains that slim/smart poles are large structures which are not low impact. We strongly reiterate comments made in our 2020 submission:

*“The proposal to specify slim poles/smart poles as low impact facilities is totally unacceptable to local government.*

*“This is a 12-metre pole. All poles need to be assessed and approved, as they can potentially pose a safety hazard and interfere with future planned council works and upgrades. Slim poles are a substantive piece of infrastructure, which means they need to be carefully assessed – visual amenity, siting, heritage concerns, safety concerns, structural integrity, would all be concerns to local government. The size and width of the pole may also pose impaired visibility to traffic. Local government does not accept that significant economic benefits may be realised if these poles are specified as low impact facilities – cost would not be the primary consideration – safety and structural integrity are superior concerns from a local government perspective.”*

Please contact [REDACTED] if you require further information.

[REDACTED]

[REDACTED]

[REDACTED]