



**Australian Mobile Telecommunications Association and Communications Alliance**

**Submission to the Department of Infrastructure Transport Regional Development and Communications**

## **Improving the telecommunications powers and immunities framework**

March 2021

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## **1. Introduction**

The Australian Mobile Telecommunications Association (AMTA) and Communications Alliance (the Associations) again welcome the opportunity to provide further comments to the Department of Infrastructure Transport Regional Developments and Communications (DoITRDC) (the Department) on its exposure drafts of amendments to the Telecommunications Low Impact Facilities Determination (LIFD) and the Telecommunications Code of Practice (the Code) under its *“Improving the powers and immunities framework”* program.

## **2. Background**

The Associations have made numerous submissions to the Department over some years during the course of the reform program aimed at improving the powers and immunities framework to better deliver latest generation mobile technologies to the Australian public via a suite of proposed amendments to the Low Impact Facilities Determination (LIFD), the Telecommunications Code of Practice (Code) and the Telecommunications Act, Schedule 3 (the Act). Most recently, the Associations made a submission to the Department in response to the Department’s Consultation Paper *“Improving the telecommunications powers and immunities framework, September 2020”*.

The Associations are pleased to now note the release of the outcomes consultation paper (March 2021) and the accompanying exposure drafts of amendments to both the Code and the LIFD implementing a first tranche of reforms in accordance with the outcomes paper. The Associations also note some important reforms have been held over in a proposed second tranche of reforms which are to be prosecuted at an unspecified later date.

Progress on the reform package is generally welcomed and supported by the Associations. However, there are some specific aspects of the proposed reforms about which the members express some concerns and these will be addressed in this submission.

## **3. Comments on Tranche One Exposure Drafts of LIFD and Code**

In this section the Associations provide more detailed comments on specific proposed amendments in the exposure drafts, item numbers are as they appear in the exposure draft LIFD and Code.

# **1. Low Impact Facilities Determination**

## **3.2—Certifiable Facilities**

The Associations members have the highest commitment to conducting their operations in a safe and responsible manner and meet all structural, operational and worker safety obligations as required by the relevant legislative and regulatory frameworks.

However, the Associations remain concerned at the inclusion of the so-called Primary Carrier Safety Conditions in the Code of Practice as safety is already the purview of other regulatory instruments and is well addressed within them, introducing potential overlap, duplication and conflict between the instruments. In particular they are concerned with the certification requirements introduced in the Code for this purpose and imposed on the newly defined 'Certifiable Facilities' in the LIFD.

Firstly, the Associations note the definition of 'Certifiable Facilities' includes almost all items in the LIFD – far in excess of what was expected by the members. This impacts on the likely cost of any requirements that have to be met for certifiable facilities beyond those already incurred for similar facilities under the current LIFD framework (for more detail on this point, see later item under 1A.7 – General).

Further, the Associations submit that such requirements (and therefore the need to define a facility as a Certifiable Facility under the LIFD) should only be applied where the facility or activity itself is likely to be impactful on the landowner or existing infrastructure. For example, the installation of a small equipment box of only a few kg on an existing utility pole (or other similar minor works) should not attract the certification requirements. This principle appears to be acknowledged in the LIFD with Items 8 and 9 of Part 1 of the Schedule to the LIFD (which include, for example, certain elements of small cell infrastructure) and Item 10 (in building coverage installations), amongst others, being exempt from the Certifiable Facilities definition under certain circumstances. The Associations assume this is precisely because these facilities are not impactful under the circumstances described.

Following this principle, it is the view of the Associations that Items 1 and 2 should likewise be exempt from the definition of Certifiable Facilities as these relate to subscriber connections deployed for the sole benefit of the landowner/occupier and with their permission and are of a relatively minor nature which is not structurally impactful. Item 5, an omnidirectional antenna, which presents little in the way of structural impact in terms of weight or wind loading, should also be exempt from the certifiable facilities definition.

Finally, the Associations note that for Item 8(b) in Part 1 of the Schedule to the LIFD (cabinet), and also for Item 2 of Part 2 (roadside cabinet) and Item 7 of Part 3 of the Schedule (solar panel), the facility is not certifiable if it is located on the ground or mounted on a structure owned by the Carrier. The Associations support this proposal, but likewise consider the same provisions should be made for Item 8(a) Part 1 (radiocommunications antenna) where it is mounted on a structure owned by the Carrier. In the current proposed drafting, it does not appear consistent to provide exemptions for cabinets and solar panels mounted on a Carrier's own structure but not permit the same for the antenna given that the engineering considerations are approximately the same.

### **Schedule Part 1- Radio facilities (table item 12) – Tower extensions**

The Associations support the amendment at Item 12 of Part 1 of the Schedule relating to tower extensions. However, for clarity, the members wish to confirm the current practice that the cumulative extension of 5m, which under the amendment could now be composed of several

consecutive extensions, is measured from the original height of the facility as defined when last the facility was subject to an approval process (such as a local government development approval, DA). Extensions that may have occurred at that location prior to, or were the subject of, an activity which successfully meets the requirements of an approval process, should not be included in the cumulative calculations for subsequent extensions relating to Item 12 (i.e. the height of the facility is reset at the time of obtaining the approval and any previous extensions are reset to zero).

## 2. Telecommunications Code of Practice

### 1A.5—Compliance with industry standards

The Associations note that the example standards provided in Note 2 have recently been updated and the correct references are now:

- RPS S-1 Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields —100 kHz to 300 GHz (2021) and;
- AS/NZS 2772.2:2016 Radiofrequency fields, Part 2: Principles and methods of measurement and computation - 3 kHz to 300 GHz as amended (AS/NZS 2772.2:2016 Amd 1:2018).

### 1A.7—Engineering Certificate - Installations

The Associations note that members design and construct their facilities to meet all applicable building construction and engineering standards, and that it is in their clear legal, economic and operational interests to do so. The Associations also note the Act already requires any structures that we construct to be structurally sound and members are not aware of any significant instances where they have failed to meet their obligations under the Act. If members failed to ensure appropriate structural integrity, they bear the risk of compensation under Section 42 of the Act and are potentially exposed to other general damages claims.

Hence, the Associations believe current regulatory requirements are adequate to address any stakeholder concerns regarding engineering practices. Nonetheless, the Associations have already indicated support in principle to the provision of certification in certain circumstances and offer the following comments in relation to the proposed amendments at clause 1A.7 of the Code.

#### 1A.7(General) – Circumstances requiring compliance certification

Noting the already extensive effort of the Associations' members to undertake their activities in compliance with all relevant standards and codes, and that these efforts generally form part of commercial arrangements and are carried out with the consent of the 3<sup>rd</sup> party infrastructure owners on which they locate network facilities, the Associations are concerned that duplication of effort arises if compliance certification is proposed under all circumstances. It is also the view of the Associations, and in keeping with their usual business practices, that not all activities require this level of design or certification where the work is of a very minor nature. The Associations therefore submit that compliance certification should not be mandated in all cases. Considerations for the requirement to provide compliance certification might be:

- Compliance certification post installation should only be required where it is of practical use to the recipient. There are many circumstances where the recipient of the LAAN is not the primary structure owner and therefore has little interest in the engineering details of works conducted on the structure. For example, a utility pole (electricity or light pole) may be owned by a utility company but located on council land. The LAAN is served on the council to gain property access, but the activity is of primary interest to the utility company. In nearly all circumstances our members will have commercial arrangements with the utility company that will prescribe all the necessary compliance documentation (after extensive negotiations and investigations are undertaken to ensure the fitness for purpose of the utility infrastructure to be used). In this case provision of compliance certification to the landowner (local council) is duplicative of effort and of no benefit. It would also require additional project milestones to collate and disseminate information adding to the cost burden of the project.
- The Associations also submit that there should be some reasonable grounds for being required to demonstrate compliance of the installation activity (i.e. there must be some reasonable expectation that the activity will have material impact on the structure or operations of a facility). Many works are of a very minor nature and may involve no more than mounting a small equipment box of only a few kilograms onto an existing pole or mast – clearly this kind of activity does not warrant the potentially lengthy and expensive processes implied in proposed amendments in clause 1A.7 of the Code, especially given the Carriers have negotiated safety practices with host owners under commercial agreements in most cases.
- Therefore, it is submitted that Carriers may be excused from the certification requirements of Part 1A.7 in these circumstances, and in particular where a commercial agreement for occupation is in place with the owner. It is suggested that rather than a blanket requirement in all cases, LAAN recipients be made aware of the option to obtain compliance certification upon request from the Carriers via information included in the LAAN itself.
- The Associations are unclear as to the format and content envisaged in the engineering certificate. If there was a requirement for many specialist engineering reports, assessing the various obligations included in the Primary Carrier Safety Conditions, then costs and time imposts would be a heavy burden on the viability of many facilities especially small cell installations. One Carrier reports that a recently requested assessment of traffic safety impacts by a traffic engineer for a proposed small cell installation cost \$1800. If this was applied to all small cell facilities covered by the Certifiable Facilities provisions then project costs could mean such facilities were not sustainable to deploy.
- It is predicted that compilation of even a basic package and administration of the process to provide engineering compliance packages could add at least \$1500 per site. Given the wide range of sites that the framework captures through the definition of Certifiable Facilities in the LIFD, this cost increase would be applied across many thousands of sites resulting in many millions of dollars of additional cost burden on the industry. Inevitably, this cost is born by the consumer, either in increased cost of service or in the reduction of service itself (due to the delay or abandonment of deployments where they become non-economic).
- Where there are specific impacts of deployment operations on a particular landowner or facility type (e.g. water storage towers) members are happy to engage in discussions to achieve design or operational outcomes to address such concerns (and these would normally be included in commercial arrangements). If it is the intention of the amendments to address

the concerns of a specific utility or landowner type, the members suggest this is better achieved through direct negotiation with the parties concerned rather than imposing onerous regulations on all other activities that are usually conducted without issue.

#### **1A.7(1) – Provide an engineering certificate within 30 days of the installation**

It is noted that the current draft requires certification to be provided to landowners and occupiers within 30 days of the facility being installed. The Associations have provided further suggestions below on the nature and content of the certification to be provided. Notwithstanding whether certification is required as currently drafted or subsequently as suggested in this submission, the members note that the timeline of 30 days proposed is inadequate.

While members and their contractors design and conduct an activity in accordance with relevant standards and codes, confirmation that the activity or installation has been undertaken in accordance with the design and relevant standards and codes cannot be certified until the construction (and commissioning, for example for EME compliance testing) is complete. Carriers do not receive such certification from their own suppliers until several months after completion and commissioning. Therefore, the timeframe proposed in the current version of the draft cannot be met. The Associations suggest that clause 1A.7(1) be amended to read ‘...within 30 days of receipt of compliance documentation from their contractors, if requested...’.

#### **1A.7(2) – Engineering certificate prepared by a suitably qualified engineer**

The Associations note that while the amendments as drafted propose a process around engineering certification utilising qualified engineers, many of the standards and codes with which the members would be required to comply are not of an engineering nature. This is implicit in the examples proposed as illustrated in 1A.5 (and our comments above) which relate to worker health and safety regarding RF fields. Other non-engineering examples implicit in the framework include ground based roadside cabinets which are described as Certifiable Facilities in the LIFD (proposed amendment at Part 3, Clause 3.2 (1)(d)) where the concern is presumably road safety rather than structure integrity (not relevant since the cabinet is not attached to any existing structure).

For this reason, the Associations suggest that the amendments to the Code under the heading of Engineering Certification be re-drafted to utilise the term ‘compliance’ rather than ‘engineering’ throughout. Additionally, it is proposed that the words ‘...suitably qualified engineer.’ in 1A.7(2) be amended to ‘...suitably qualified person’. This more general requirement will allow a person (or persons under their delegation) who is appropriately qualified to address all standards and codes relevant to the activity to be signatory to the new ‘compliance’ certification.

#### **1A.7(4) – Engineering certificate information requirements**

The Associations note that it is their normal practice to engage appropriately qualified persons to design and install their infrastructure and to undertake an activity in accordance with codes and standards where these are relevant to the activity. Part of the quality assurance process typically

applied in commercial agreements for relevant activities (i.e. where the activity is impactful on the infrastructure on which it is undertaken) is that consultants and contractors provide 'as-built' drawings and specifications post construction to ensure facilities are constructed as originally designed (thereby meeting compliance requirements). It is therefore suggested that the requirements at 1A.7(4)(a)-(e) be amended to simply require a declaration that the activity has been conducted in accordance with the specified design. For some members, this could include provision of aspects of their 'as built' drawings where it is relevant to do so. This will both meet the intention of the current drafting in providing relevant information to the landowner (or relevant recipient, see comments above) and reduce wasteful duplication of effort on the part of our members.

For the Department's information, the members note that the typical contents of a 'Design and Construction' information package routinely provided to Carriers for non-minor works on their own facilities, or to 3<sup>rd</sup> party infrastructure owners where the Carriers' do not own the facility on which the activity is undertaken includes:

- Structural assessments including mounts, foundations and structure – certifying the structural adequacy of the pole/tower, foundation and proposed mounting steelwork to support the load bearing equipment
- For-construction drawings – showing a detailed design of the plant and equipment being installed, identifying access-to-site considerations, cabling routes etc.

Following completion of construction, contractors would typically provide (for relevant, impactful activities):

- As Built Design drawings
- Structural Certificate
- As Built Compliance Certificate

In addition to telecommunications and construction specific obligations, members also comply with relevant Australian Standards, such as AS 4799 Installation of underground utility services and pipelines within railway boundaries and AS/NZS 5601.1:2013 Gas installations General installations, for optical cable installations. Members also meet and provide regulatory compliance information for safe work in relation to EME in accordance with Radiation Protection Standard (RPS-S1).

### **1A.13 – Records for certain facilities**

The Associations note that the Code of Practice includes an amendment at 1A.13(3)(b)(ii) to require that, in addition to records previously required to be held, the depth of a facility now be recorded for underground facilities.

The Associations express concern regarding this amendment as it is considered not feasible to maintain such a record with any accuracy as it is subject to subsequent works by other contractors over which the members would have no control or knowledge. Finished ground levels can change over time due to non-Carrier civil works or environmental factors. These are outside the control of Carriers, and in most case unknown.

For example, while the original depth of a facility may be accurately recorded for an underground facility such as a cable at the time of installation, a landowner or a local council may subsequently undertake ground works such as the installation of playground facilities (which may involve excavations) or a raised garden area (which would involve infill works) which would subsequently make the recorded depth inaccurate.

Also, Carriers often use pits and pipes transferred from third parties such as developers. Other than undertaking a superficial inspection of the third party's infrastructure, Carriers are dependent on the information provided by the third party and Carriers cannot be responsible for inaccurate information supplied by a third party. It is also unclear what the consequence of a facility's recorded depth not aligning at a future time in the field may be and members consider it unwise to rely on historical recording of depth for underground facilities,

The members consider this situation less preferable than no recorded original depth as the existence of the record may imply to subsequent contractors and stakeholders a level accuracy that is not realistic rather than proceeding cautiously to determine the true depth by other means at the time of their works.

Regarding existing underground facilities, there are no practical ways for such records to be sourced and recorded retrospectively, and maintenance of depth records by Carriers over time is impossible.

The Associations therefore recommend that the amendment at to require the recording of depth at 1A.13(3)(b)(ii) be removed.

### **2.35 and 2.35(A)—TIO Referrals**

The Associations are very supportive of the proposal to permit Carriers to refer objections regarding land entry activities directly to the TIO, in addition to requiring the landowner or occupier to request the Carrier to make the referral. The Associations note that the conditions regarding making reasonable efforts to resolve the matter in good faith and the time period of 10 business days are appropriate and in accordance with our members' usual practice.

The Associations also support the TIO proposal to impose a deadline on the time a Carrier may take to refer an objection to the TIO after it has received a request to do so, but only if this is limited to the referral of the request itself and does not include the full information pack that typically accompanies such a referral.

Members note that gathering, curating and collating relevant information for some complex referrals may take considerably longer than the 10 business days proposed. Since a Carrier is unable to proceed with an activity until the objection is resolved, it is clearly in the Carriers' interests to complete the objection process as soon as possible and the Carriers are unaware of any evidence of a systemic occurrence of any such delays that would require any additional regulation to address.



#### **4. Concluding Remarks**

In conclusion, the Associations welcome the publication of the Department's exposure drafts of amendments to the Telecommunications Low Impact Facilities Determination (LIFD) and the Telecommunications Code of Practice (the Code) under its "Improving the powers and immunities framework" program.

While strongly supporting those amendments relating to Part 1 Items 4, 7, and 12 and Part 8 Item 2 of the Schedule to the LIFD (with some clarification as mentioned above), the amendments proposed in Part 3 of the LIFD (3.2 Certifiable Facilities) and Chapter 1A7 of the Code of Practice (Engineering Certificate – Installations) are of significant concern for the members. The Associations consider there is potentially significant additional cost and overhead associated with these provisions, much of which may be duplicate with certifications already provided under commercial arrangements, and therefore these provisions need significant further qualification to ensure they are applied only where they may be truly relevant.

The Associations also note their support for the proposed amendment to the Code of Practice at Section 2.35 (Request to refer objection to the TIO by the objector) and Section 2.35A (Referral of matters by a Carrier to the TIO) but with the qualification that the proposed timeframe applies only to referral of the request itself owing to the sometimes lengthy process of provision of the complete suite of information supporting such requests (which in any case will be provided as soon as possible as it is in the Carriers' interests to do so). The Associations have recommended that the amendment at 1A.13(3)(b)(ii) to require the recording of the depth of an underground facility be removed.

The Associations look forward to continuing to work with the Department to refine and improve the proposed amendments and would be happy to meet with the Department to provide any further information or clarification that may be required.