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Submission Response – Improving the telecommunications powers and immunities framework – Response to Consultation Outcomes Paper - Tranche 1

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Council of Capital City Lord Mayors



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1. CCCLM POSITION

General Comments

- 1.1 The Council of Capital City Lord Mayors (**CCCLM**) welcomes the opportunity to make comments on the Department of Infrastructure, Transport, Regional Development and Communications Consultation's Paper on *Improving the Telecommunication Powers and Immunities Framework – Consultation Outcomes Paper* (**Consultation Outcomes Paper**), which was released in March 2021.
- 1.2 CCCLM's key purpose is to represent the collective views of the capital cities to Federal Government decision makers, and to lobby for and maintain Federal Government interest in capital cities. As one of the most urbanised countries in the world, Australia's capital cities are home to:
 - 16.6 million people (more than two thirds of Australia's population); and
 - 8.7 million workers (69% of Australia's workforce).
- 1.3 The CCCLM notes that as the ACT Government and City of Perth were not represented in our initial submission (due to their respective caretaker periods) it would be improper to include both the ACT and City of Perth in our subsequent comments on the associated outcomes paper.
- 1.4 Nonetheless, CCCLM has been able to consider various issues under advisement from some of the constituent Capital Cities and it is anticipated that those cities will also be making independent submissions.
- 1.5 CCCLM understands the importance of state-of-the-art infrastructure to support and enhance the lives of citizens and Australia's workforce in Capital Cities. The rapid and priority introduction of 5G is critical to the future of Capital Cities and as such, CCCLM supports the implementation of a functional 5G framework which adequately addressed the 'balancing; of interests between carriers and landowners, occupiers and councils.
- 1.6 CCCLM considers it very important that, in light of the far-reaching implications of the proposals in the Paper, CCCLM's input is considered with due regard for the very broad perspective it provides as representative of Australia's Capital Cities (making up a significant percentage of Australia's Workforce).
- 1.7 In 2019 a number of cities independently made submissions (which are considered relevant to this submission) to the House of Representatives Standing Committee on

Communications and the Arts' 5G Inquiry. Following this, CCCLM made a collective submission to the October 2020 consultation period for Improving the telecommunications powers and immunities framework. This submission summarises the key issues raised therein and reiterates recommendations which have perhaps been overlooked by the Consultation Outcomes Paper released in March 2021.

1.8 The Report makes the following recommendations:

<p>Recommendation 3</p> <p>2.169 <i>The Committee recommends that the Australian Government commence a review of the low impact facilities framework to ensure that its powers to encourage co-location of facilities and equipment are fit-for-purpose in a 5G environment. As part of this process, the Australian Government should begin reviewing carrier arrangements for 5G infrastructure sharing.</i></p> <p>Recommendation 4</p> <p>2.170 <i>The Committee recommends that the Department of Communications and the Arts assess the suitability of current powers and immunities arrangements, especially in relation to the timeframes for raising objections, noting the likelihood of an increased number of installations for the deployment of 5G.</i></p>

1.9 The Consultation Outcomes Paper references the suggestions to amend the various legislative instruments which allow carriers to deploy telecommunications equipment and infrastructure with a designation of 'low impact'. These key legislative instruments are summarised below:

- The *Telecommunications Act 1997* (Cth) ('**the Act**');
 - The *Telecommunications Code of Practice 2018* (Cth) ('**Code of Practice**');
 - The *Telecommunications (Low-impact Facilities) Determination 2018* (the '**LIFD**');
- (Collectively the '**Telco Legislation**')

The Consultation Outcomes Paper stresses the importance that powers afforded to telecommunications carriers by the Telco Legislation are used appropriately and that landowners' interests are protected.

Implications of 'Low-impact Facilities' in the 5G Context for Capital City Commercial Districts

1.10 The LIFD made under subclause 6(3) of Schedule 3 to the Act describes in some detail low-impact deployments (which form the basis of the carriers' obligations for deploying mobile base stations and antennas). It is not disputed that, through the introduction of 5G, mobile cell sizes will shrink, resulting in the need for more cell sites. This will be particularly evident in the most densely populated areas like major central business

districts of Australia's Capital Cities ('CBDs'). Three (or more) carriers deploying significantly more cells will certainly add clutter and reduce amenity in the city.

- 1.11 The original LIFD did not foresee this significant density of cells posed by the introduction of 5G, and as such, the **cumulative effect** of many more, smaller cells **must** be now considered. Indeed, the ever-increasing consumer usage of telecommunications services and expectations of higher bandwidth present carriers with a financial incentive to deploy as many small cells as possible, and a 5G evolution (which leverages a higher spectrum in the millimetre frequency bands) may result in cells being deployed as close as 100 metres apart. Such a high concentration of cells within Capital City CBDs will have a significant impact on the amenity of the city users as well as cell performance.
- 1.12 As carriers add cells over time in a concentrated area, there will likely be 'frequency overlap' as cell density increases. Although a Carrier will aim to place cells so overlap is minimised, the business needs driving cell installation will inevitably overrule optimal placement in certain areas. At a certain point the frequency overlap might become so great that an additionally installed cell will render one or two or three sensors in close proximity, superfluous.
- 1.13 Given this cumulative effect, carriers should be required to employ a continual **additive and reductive** approach to their spatial positioning of cells. This presents an opportunity for the Carrier to revisit the spatial distribution in this 'frequency precinct' and to de-densify the cells by removing or redeploying the newly superfluous ones elsewhere. CCCLM will provide further submissions on this matter in Tranche 2, which provides for consideration of smart poles and removal of redundant equipment.
- 1.14 The local government authorities of the Capital Cities should be distinguished from the concept of a conventional landowner as referred to in the Telco Legislation, as they must also don significant responsibilities on behalf of their Cities, including, but not limited to, safety (footpath amenity), functionality, liveability (access to open space), promotions, heritage protection, and design (visual amenity).

Current Position

- 1.15 As it currently stands, local governments of the Capital Cities are largely unable to influence the deployment of mobile networks unless there are heritage implications or other special circumstances (e.g. crown land). This must change if CCCLM is to ensure

the quality of experience of each of the capital cities which also drive growth and success.

Striking the Right Balance

1.16 CCCLM understands the difficulties presented to carriers by the roll-out of a 5G network, there can be no doubt that regulatory change is crucial for the efficiency in deployment and future operation of such a network. Moreover, regulatory change is essential to ensuring the right balance is struck between this driver of telecommunications innovation and amenity and quality of services. Indeed, this important *balance* is recognised by the Consultation Outcomes Paper.

The Need for National Consistency

1.17 It is noted that metropolitan cities, largely the capital cities of Australian States and Territories and some others, may require different supports and procedures to other targeted areas. Indeed, CCCLM supports the proposition that it cannot be considered that a 'one size fits all' approach would be efficient in light of the considerable difference in the density of sites needed in each major Australian Capital compared to rural or regional areas for example. CCCLM does not consider that a 'nationally consistent' approach is necessary or desirable in the circumstances.

1.18 CCCLM notes that the Framework already works on different levels:

- Facilities are classified as *low-impact* (depending on the specifics of the facility, and also the location of the site, being rural, residential, industrial or commercial);¹
- Exclusionary areas already exist in areas of environmental significance;²
- The Industry Code already promotes distinct approaches for small cells (introduced only in 2018)³ and other low-impact telecommunications equipment, highlighting the difference in consultation etc. required.

Hence the suggested approach need not be seen as revolutionary.

Recommendations

1.19 CCCLM supports a position that carriers should, to the best standard possible, undertake the rollout of 5G with a whole of precinct approach to its site selection.

¹ *Telecommunications (Low-impact Facilities) Determination 2018* (the 'LIFD').

² *Telecommunications Act 1997* (Cth) Schedule 3, clause 2.5.

³ *Mobile Phone Base Station Deployment Industry Code (C564:2018)*

1.20 The cumulative effect of multiple so-called low-impact network elements should be considered in determining whether any given individual cell site is in fact ‘low-impact’ and what the relevant best practice engineering, safety and design guidelines should be met for a specific site. Indeed, it must be acknowledged that issues presented for consideration by local government authorities are compounded by each additional site in close proximity.

1.21 Accordingly, CCCLM would require carriers to provide details of their plans for cell deployments to local government agencies on a whole-precinct basis rather than one cell at a time to ensure the cumulative effect of low-impact deployments is considered in totality. Additionally, CCCLM encourages the Department to consider the possibility for:

- Different frameworks for 5G facilities (insofar as consultation with councils and utility providers are addressed in the Industry Code); and
- Different approaches for 5G to capital city CBD areas (with significantly higher density of sites due to increased consumer need and use) and rural / remote areas (such that for utilisation in capital city CBD areas there is established a precinct-wide notification of planned sites generally and consultation to ensure adherence to the Industry Code).

Public Authority

1.22 CCCLM supports any recommendation that references to “public utilities and road authorities” be expanded to include all local government authorities (not just the council as a road authority) as public landowners and managers.

Carrier Powers and Lopping of Trees

1.23 CCCLM understands that the efficacy of the 5G millimetre wave radio spectrum is adversely affected by trees and other physical assets and this adds a critical reason to collaboratively decide on cell heights and locations. Noting that the Act permits the lopping of trees,⁴ CCCLM cannot support this ancillary power which will sacrifice trees in the Capital Cities in favour of network performance.

⁴ *Telecommunications Act 1997* (Cth) Schedule 3, clause 18.

2. PRIMARY CONCERNS WITH ISSUES IDENTIFIED IN THE CONSULTATION OUTCOMES PAPER

2.1 The Consultation Outcomes Paper has identified that proposed changes in Tranche 1 will be dealt with by;

- Amendments to The *Telecommunications Code of Practice 2018* (Cth) (**'Code of Practice'**);
- Amendments to The *Telecommunications (Low-impact Facilities) Determination 2018* (the **'LIFD'**); and also
- Policy implementation

Accordingly, CCCLM has addressed below their concerns and recommendations regarding each of these areas.

Amendments to Code of Practice

2.2 CCCLM supports the restructuring of primary conditions into Chapter 1A as useful in terms of reducing confusion of landowners and carriers regarding their responsibilities.

The primary issues CCCLM has identified with the new Chapter 1A relate to:

- New engineering certificate requirement
- Industry standards and codes
- Best practice section
- Outstanding safety concerns that should be addressed through additional new provisions

Engineering certificate – Installations 1A.7

2.3 CCCLM principally agrees with the introduction of an Engineering certificate requirement, in Chapter 1A.7, but queries the current drafting and practical application of this section, as outlined below.

2.4 The carrier only has a duty to provide the certificate 30 days after the facility is installed, meaning there is no obligation to provide any assurance that the facility will be sound prior to this, nor any information about its dimensions, location etc. To establish carriers' requirement and intention to meet this requirement from their initial contact with the landowner, CCCLM recommends including in the standard LAAN notice template proposed by the Consultation Outcomes Paper (discussed below) a checkbox the carrier can tick to certify that it the facility will be designed to meet the standards of Chapter 1A.7 and will be certified by a suitably qualified engineer.

- 2.5 CCCLM queries what a 'suitably qualified engineer' is with regards to this provision and whether this will be an experienced engineer working in the telecommunications sector or otherwise. Further definition or restriction of this title could be implemented within Chapter 1A.7 or alternatively as part of an ACMA-registered industry standard.
- 2.6 Chapter 1A.7(4)(d) references 'standards and codes' which appears to 1A.6 above. As discussed below, Chapter 1A.6 seem to at this stage only refer to the codes and standards registered by ACMA, which do not currently relate primarily to safety or structural engineering.
- 2.7 Please see above analysis of how the engineering certificate requirement interacts with the LIFD definition of certified facility.

Industry Standards and Best Practice

- 2.8 Schedule 3 to the Act outlines a requirement for carriers to comply with industry standards (namely sections 12 and 15 of the Act):

12 Compliance with industry standards

If a carrier engages in an activity covered by Division 2, 3 or 4, the carrier must do so in accordance with any standard that:

relates to the activity; and

is recognised by the ACMA as a standard for use in that industry; and

is likely to reduce a risk to the safety of the public if the carrier complies with the standard.

15 Conditions specified in a Ministerial Code of Practice

(5) This clause does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.

- 2.9 The issue is that, from a statutory interpretation perspective, the drafting of these provisions requires that **all** of the conditions in section 12 (paragraphs (a), (b) and (c)) apply. In the context of carriers engaging in those activities, standards recognised by / registered with ACMA are very limited.⁵

⁵ ACMA, *Register of telco industry codes and standards*, retrieved from: <https://www.acma.gov.au/register-telco-industry-codes-and-standards>.

- 2.10 While the Code, as amended, attempts to replicate conceptually these industry standards in Chapter 1A.5 and also provides for the concept of best practice in Chapter 1A.4, there is an overall lack of clarity and specificity. In the Code ‘industry standard’ means a standard generally recognised by the Australian telecommunications industry as a standard for use in *the industry*. 1A.5 therefore requires carriers only to follow standards registered by ACMA. These standards are directly related to the telecommunications industry and primarily do not have a safety focus. The only code providing relevant design and installation standards is the *Mobile Phone Base Station Deployment C564:2020* ‘Industry Code’ (as referenced in previous paper), which applies only to “carriers who are: installing; intending to install; operating; or contracting or arranging for the installation of fixed radiocommunications infrastructure...which is used, intended to be used, or capable of being used to supply Public Mobile Telecommunications Services. This Code does not apply to Radiocommunications Infrastructure that is not Mobile Phone Radiocommunications Infrastructure.”
- 2.11 With the Industry Code being the only code on the ACMA website which addresses any aspect of site deployment, this code will need to be addressed and specifically amended to include all carriers.
- 2.12 It is interesting to note that although the term industry standards is defined in the dictionary it is not used elsewhere in Chapter 1A, although it would likely be helpful to include this term in section 1A.7 with regards to engineering certificate standards.
- 2.13 1A.5(b) refers to a standard that is “recognised by the ACMA as a standard for use in that industry,” which seems to imply any other relevant industry that the prescribed activity may entail, for example, electrical, railway, roads etc. Codes recognised by ACMA, however, relate only to the telecommunications industry specifically. In any case, we suggest that it would be beneficial to impose a duty upon carriers to also comply with the standards of other relevant industries to their activity and this could be incorporated into 1A.5 or as a separate section in 1A.6 (see below).
- 2.14 1A.5(c) Seems to suggest that if the carrier does not deem a relevant standard to be likely to reduce a risk to the community, they would not be required to follow this standard. This weakens the overall effect of 1A.5 to protect public health and safety.
- 2.15 We suggest that a process for proper codification of safety and design standards by ACMA be introduced. Landowner groups and local governments should be encouraged to provide relevant input into this process to work closely and cooperate with the telco

industry to codify safety, design and engineering practices that are registered with ACMA and therefore mandatory as “industry standards” under Schedule 12.

- 2.16 The current proposed Section 1A.6 has the same impact as section 1A.5. It only requires carriers to follow standards registered by ACMA, as established above. It is unclear what this section purports to achieve that is not already addressed by the proper purpose of 1A.5.
- 2.17 Given that 1A.6 does not add any additional requirements not established by 1A.5, it would be better to revise this section to instead introduce a requirement for carriers to meet industry standards from any other relevant industry that should apply to their installation and maintenance of a facility depending on its location, for example, roads, water, rail or electricity. There are codes for various industries (including the telecommunications industry) in place in some of CCCLM’s constituent cities that could be easily incorporated as registered codes with ACMA or alternatively used as a reference point for the development of new industry codes and standards.

2.18 Additionally, the Code’s provisions concerning ‘best practice,’ now set out in Chapter 1A.4, are inadequate:⁶

Best practice
<p>In engaging in a land entry activity, a carrier must ensure that the design, planning and installation of facilities (the carrier’s facilities) is in accordance with best practice.</p> <p>For subsection (1), best practice is conduct of the carrier complying with:</p> <p>an industry code, registered by the ACMA under Part 6 of the Act, applying to the activity; or</p> <p>a standard, made by the ACMA under Part 6 of the Act, applying to the activity.</p> <p>(3) However, if there is no code or standard in force for the activity, best practice is conduct regarded by people constructing facilities substantially similar to the carrier’s facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.</p>

2.19 Ultimately, paragraph (3) provides for a concept of ‘best practice’ which is self-determinative for the telecommunications industry, meaning that what can be considered best practice is essentially regulated by carriers (who are likely the only *people constructing facilities substantially similar to the carrier’s facilities*) and as such, does not address the issues outlined above.

2.20 Adding codes regarding safety and design standards to ACMA’s register will help in this regard, but in the minimum, the word “safety” must be added after the words “using the best available design, planning...” under Chapter 1A.4(3) so it is incorporated into the definition of best practice.

2.21 CCCLM suggests that a new section be added following Chapter 1A.10 to impose additional responsibilities on carriers to maintain, service and repair any facility or parts of facility they have installed on the land. There is currently no requirement for carriers

⁶ *Telecommunications Code of Practice 2018* (Cth)

to maintain or fix defective assets or even respond to notification by a landowner that their facility is defective or unsafe in some way.

2.22 To ensure public safety, carriers should be required to:

- Maintain facilities to industry standards of safety, design and engineering for the duration of their existence.
- Take all reasonable and immediate steps to rectify as soon as practicable a fault or safety concern when made known by the landowner, occupier or authority.

2.23 Finally, the 'Industry Code' identified in previous paper has not been specifically discussed at all in the Consultation Outcomes Paper. No changes have been proposed that would impose additional safety standards or requirements. Regardless, the industry code applies only to mobile carriers and is therefore insufficient to provide for standards regarding the installation of all types of low-impact facilities. To be effective, the code needs to be expanded to cover all carriers, including internet-only providers.

Amendments to the LIFD

2.24 The primary issues CCCLM has identified with the proposed amendments to the LIFD relate to the new 'certifiable facility' definition (Section 3.2). The changes to low-impact radiocommunications facilities and co-location of facilities present no concerns for CoM.

2.25 CCCLM primarily agrees with the implementation of a new certifiable facility definition, but raises a few specific queries regarding instances where the definition may not be broad enough.

2.26 Of the low-impact facilities to be classified as certifiable facilities, distinct treatments apply to radiocommunications facility cabinets and solar panels, which are not classified as a certifiable facility if they are positioned on the ground or are attached to a structure which is owned by the carrier.

2.27 As they are not classified as certifiable facilities, there is no requirement for an engineering certificate to be completed for a cabinet or solar panel attached to a structure owned by the carrier. The structures they may be attached to however, (Pillars, Pedestals and Equipment Shelters) are not classed as certifiable facilities either. This means, for example a solar panel with a base of 12.5m² can be attached to a structure owned by the carrier and none of this will need to be certified by an engineer.

2.28 As all towers, satellite dishes, antennas, radiocommunications dishes and tower extensions are certifiable facilities, the main areas of concern for CCCLM regarding facilities' safety and structural integrity are covered.

Issues to be addressed via policy implementation

2.29 CCCLM supports the development of both a template LAAN notice and Fact sheet to clarify the objections process for landowners but has suggestions regarding both of these documents.

LAAN Notice Template

2.30 We suggest that the practical application of the use of this template must be considered. The TIO already has guidelines in place on how to complete a LAAN notice correctly, yet landowners have provided many examples of instances where carriers have failed to properly follow the Act and Code with regards to notices as it currently stands, or failed to properly attach plans and information.

2.31 The LAAN template should inform landowners whether the facility to be installed is a certifiable facility, and if so, to expect an engineering certificate within 30 days of its installation.

2.32 CCCLM suggests that the LAAN notice template should be incorporated as a standard on ACMA's website to make compliance required by carriers. Our practical concern, as discussed below, is that the penalties for carriers breaching the code are few. It is, however, noted that Tranche 2 will be addressing the extension of a minimum notice period. The LAAN template and Factsheet will obviously need to be altered once Tranche 2 issues have been resolved.

Fact Sheet

2.33 CCCLM supports the creation of a fact sheet to further clarify the objections process for landowners in an easily readable format and look forward to seeing the finished product.

2.34 We suggest that the fact sheet should include a section at the end letting landowners know what to expect going forward with installation. This should include reference to the engineering certificate that the carrier is required to provide for certifiable facilities so that the landowner knows to expect this certification in a timely manner.

3. RESPONSES TO CHANGES PROPOSED IN THE CONSULTATION OUTCOMES PAPER

- 3.1 CCCLM responses to the prompt questions in the Original Paper, have been summarised below, and are identified as being either a Tranche 1 or Tranche 2 issue.

1A - Creation of a primary safety condition (Tranche 1)

- 3.2 It is considered that the mandated codes and standards do not always fully and properly address other relevant and ancillary safety considerations. Subject to some changes to the suggested draft amendments and introduction of enforceable safety codes, CCCLM is general in support of the proposal.

1B - Standard notifications across industry (Tranche 1)

- 3.3 Generally, a standard LAAN notice would be valuable, particularly including expected timeframes to carry out works. The recommendation includes reference to additional obligations if landowners are public utilities. Consideration should be given to widening this to include local government authorities (LGA) as public land managers. CCCLM also considers that it would be beneficial for carriers to provide additional information where undertaking works on public open space/reserves including details of the equipment to be brought onto the land. Frequently, these works clash with proposed organised community sport within the Capital Cities and other events so the timelines will need to differ for this type of landholding.
- 3.4 Carriers should provide quality-assessed, geo-referenced datasets to sophisticated landowners in a standard format that would allow the data (both spatial and attribute) to be transferred via an API with no or minimal post-processing effort required. The regulations should provide for ongoing notifications to landowners as situations change via an easy-to-use application (such as a mobile phone app).
- 3.5 There should also be reference to coordination and co-operation regarding the scheduling and undertaking works to ensure minimal disruption for capital cities.
- 3.6 CCCLM is in support of this proposal and welcomes any opportunity to be involved to progress the standard LAAN.

1C - Withdrawal of Notifications (Tranche 1)

- 3.7 CCCLM agrees on the importance of formal withdrawal notice – especially where the proposed works are within public open space. Formal withdrawal notices also ensure that carriers are committed to the site.
- 3.8 In addition to the amendments to the Code, CCCLM would support a new industry code registered by the ACMA requiring carriers to follow a set procedure to withdraw a LAAN when cancelled or indefinitely delayed.

1D - Requirement to provide engineering certification (Tranche 1)

- 3.9 Subject to some changes to the suggested draft amendments and introduction of enforceable safety codes, CCCLM is general in support of the proposal.

2A - Clarifying the objections process for landowners (Tranche 1)

- 3.10 CCCLM supports the development of both a template LAAN notice and Fact sheet to clarify the objections process for landowners but has suggestions regarding both of these documents. From CCCLM's perspective, any improvements that can be made to the objections process are welcome. The process should be given a longer response time, clear information and schematics on what landowners and occupiers are commenting on. It should not be the responsibility of the landowner to make sense of the application and determine what exactly is being reviewed, and it should also not be the responsibility of the landowner to figure out how objections should be made. Carriers should also be transparent with what kind of equipment is being used in their infrastructure, allowing for councils and landowners to create products that accommodate their needs where possible. Carriers should seek out equipment that is as small and efficient as possible to allow for variety in the design of poles and other infrastructure.

2B - Allowing carriers to refer objections to the TIO (Tranche 1)

- 3.11 With a focus on 5G deployment in CBD areas, CCCLM would have concerns that carriers would have the right to accelerate time frames for a referral to the TIO.

3A - Improve coverage outcomes through better infrastructure, where safe (Tranche 1)

- 3.12 While it is considered that there has been insufficient time to thoroughly assess the impact of the proposed changes in this regard, the CCCLM, on behalf of its' constituents,

would submit that there needs to be a cohesive, cooperative approach concerning these changes, including consultation with CCCLM and other stakeholders regarding potential impacts in due course.

3B - Improve coverage outcomes through tower extensions (Tranche 1)

- 3.13 While it is considered that there has been insufficient time to thoroughly assess the impact of the proposed changes in this regard, the CCCLM, on behalf of its' constituents, would submit that there needs to be a cohesive, cooperative approach concerning these changes, including consultation with CCCLM and other stakeholders regarding potential impacts in due course.

3D - Encourage the co-location of facilities (Tranche 1)

- 3.14 CCCLM suggests that a consistent approach to measuring co-location volumes should be established so the same approach is applied by each carrier. Indeed, the promotion of co-location would appear to be consistent with the plans of the Capital Cities, which generally require some form of 'the siting or co-location of facilities to minimise adverse impacts on community wellbeing, visual amenity and the environment'.

1E - Extending notification timeframes (Tranche 2)

- 3.15 With a 5G deployment focus and CCCLM's preferred/recommended a whole of precinct consultation process, CCCLM considers that time frames be extended such that: (1) there is a minimum notification period of 10 to 20 business days; and (2) the timeframe to provide a written objection is extended by 5 to 10 business days.
- 3.16 Additionally, references to "public utilities and road authorities" shall be expanded to include all local government authorities (not just the council as a road authority) as public landowners and managers.
- 3.17 An increased time frame to respond to a LAAN, (i.e. more than 10 days) would assist, because it is unlikely a proposal will be evaluated by Council in 10 days. At times, LAAN notices may take 10 days to reach the correct officer. If adequate time to evaluate a proposal is given, there is less likelihood of a subsequent LAAN objection as CCCLM will have time to refer for internal stakeholder engagement.

3.18 Currently, it is not an uncommon practice to lodge an objection while a more detailed review is occurring as a risk mitigation strategy, if concerns arise once it has been completely evaluated.

3.19 CCCLM has also identified that Subsection 17(6) of the Act poses a problem with regards to the issue of LAAN notices. CCCLM has ongoing concerns regarding the potential for abuse of subsection 17(6) of Schedule 3 to the Act.

3.20 Subsection 17(6) of Schedule 3 to the Act has been identified as a loophole for carriers and consideration must be given to the alteration of this provision, particularly given the extension of timeframes likely to occur. S17(6) allows carriers to engage in installation, inspection or maintenance activities without providing written notice to the landowner and occupier if:

- (b) those activities need to be carried out without delay in order to protect:
 - (i) the integrity of a telecommunications network or a facility; or
 - (ii) the health or safety of persons; or
 - (iii) the environment; or
 - (iv) property; or
 - (v) the maintenance of an adequate level of service.

3.21 Subsections 17(6)(b)(i) and (v) are problematic here because they afford carriers broad “emergency” powers relating to the integrity of a network or maintenance of an adequate level of service. These conditions are broadly defined and can easily be applied to a range of situations that are not “emergencies” as the explanatory notes of the Act state this section was implemented to deal with. This allows for errant carriers to misuse s17(6) in order to avoid the notification timeframes for maintenance, installation and inspection and this potential loophole will only become more attractive to carriers as the notification timeframes increase. CCCLM queries why s17(6) applies to ‘inspection’ and ‘installation’ activities. This should be considered as part of the Tranche 2 amendments to the Act and Code.

2C - Removal of redundant equipment (Tranche 2)

3.22 CCCLM strongly supports the introduction of a mandatory requirement for carriers to remove equipment when it becomes redundant. Equipment left on open space is unsightly and the land could be used for alternative use if it was removed. Additionally, above ground cabling on Council assets is unsightly and should be removed if an asset is decommissioned.

3C - Allowing deployment on poles rather than on utilities (Tranche 2)

- 3.23 Introducing the right for carriers to deploy their own assets in the public realm, defeats the utility of the current framework which requires sensible partnership with owners of existing assets (e.g. road authorities and utilities providers).
- 3.24 Any proposal to designate such assets (including poles up to 12 metres high and 500mm in diameter) as low-impact facilities in all types of areas (including the residential and commercial areas of Australian Capital Cities), is unacceptable. All poles should be assessed and approved by local authority as they could potentially pose a safety hazard and/or interfere with future planned upgrades of facilities and/or amenity.
- 3.25 The positioning of poles or facilities (including any ancillary equipment cabinets etc.) on Local Government land should always be subject to the 'approval' of the relevant council. Telecommunications infrastructure which could cause obstructions or interfere with the present and future functionality of the land or facility and may constitute a safety hazard should always be subject to assessment under local planning laws.
- 3.26 It must be considered that the changes posed by Section 3C of the Paper are problematic for all local government authorities, because:
- They ignore the key findings from the 2019 Standing Committee on Communications and the Arts Inquiry into 5G in Australia;
 - They fail to acknowledge or account for the ***cumulative impact*** of small cells under the current definition of '*low-impact*';
 - They remove the incentive for new asset sharing and ownership models and take away potential revenue from local government authorities and other public agencies (e.g. road authorities);
 - They may result in the deployment of small cell design standards that are inappropriate for a capital city setting, due to cost benefits for carriers to align with a 'national' company design standard rather than a 'city-specific' standard.
- 3.27 Large metropolitan cities have an abundance of suitable potential infrastructure. Accordingly, this proposed change would undermine CCCLM's position on the 5G framework and potentially jeopardise any future possibility of neutral host networks and increased co-location.