

**Subject:** Feedback on Consultation paper: Amending carrier powers & immunities to support multi-technology rollouts of high-speed broadband

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I make the following submission on behalf of the Queensland Department of Transport and Main Roads (TMR).

TMR notes the intent of the amendments as outlined in the overview to the consultation paper dated 12 June 2015. Whilst TMR supports the roll out of the NBN we wish to record our concerns and looks forward to a response from the Federal Department of Communications to the issues raised below.

By way of background, TMR is the key Queensland Government agency that manages the extensive transport system and network. The network consists of 33,367 kilometres of road corridors (including busways). These corridors often contain public utility plant of utility service providers including a mixture of entities under state and federal law. Increasingly, NBN and other service providers seek to access the corridors. TMR manages access through negotiations, considering applications made in accordance with state and federal legislation. TMR and NBN are discussing access arrangements for its ongoing program of works

TMR notes that the draft amendment does not propose to undertake a Regulatory Impact Statement or assessment of the impacts of the proposed changes. TMR has concerns with this approach as there are considerable impacts (engineering, safety and costs) as summarised below under the heading "Issues".

TMR requests clarification about to whom this change in carrier powers actually applies. Is it only NBN as a non-discriminatory national wholesaler? Or does it include other carriers?

TMR strongly suggest that the Federal Department of Communications clarifies if it is reasonable for road authorities to require appropriate traffic management arrangements during installation and maintenance for safety reasons.

TMR's major concern is based around the expansion of the low impact determination will lead to an increase in either the number, or intensity or both, of the occasions when NBN or a carrier which satisfies the same conditions will want to install facilities on roads managed by TMR, and make a case that accordingly (and based on TMR's experience of the reluctance of carriers generally to accept TMR's reasonable requirements on road safety when negotiating with carriers under cl. 11 of schedule 3), cl 11 of schedule 3 should be amended so that a carrier must comply with whatever road safety requirements are imposed by a road authority (including the time of the day when activities under the low impact determination are to take place), whatever other negotiation takes place between the carrier and the road authority.

TMR notes that of the proposed amendments to the Low-impact facility determination, the most significant impact for TMR would be the above ground fibre optic provisions in Part 4A of the schedule. This proposed amendment if made, would extend a low impact facility to include cable in addition to fibre optic and increase the possible size to up to 48mm in diameter. With this expansion

of items from 8 to 10, and some re-naming of facilities, TMR is of the opinion there will be potentially negative impacts to road safety and TMR operations. TMR understands that the changes in the Low-impact determination are aimed at the NBN, not other carriers. As Part 4A presently provides (on fibre optic), the new Part 4A should only apply to a facility 'that is ... part of a national network used, or for use, for the high speed carriage of communications, on a wholesale-only and non-discriminatory basis'. While TMR understand this is aimed at NBN, it requests confirmation in writing that it will only apply to the NBN. As they are written, the amendment's terms are open to interpretation. The terms suggest that the amendment could apply to any other carrier over and above the NBN. While this would only to the extent that the carrier is building a network, not just for its own retail use, and available to other carriers without discriminating for or against carriers who want to use the network, the amendment adds a level of uncertainty to interpretation of the regulation.

In summary, the new Part 4A would apply not just to fibre optic, but to other forms of cable. As a result, it could have a substantial impact on TMR's operations and dealings with telecommunications organisations.

TMR also notes that under proposed amendment 23, at page 13, Para 3.2.4 reads "In addition, carriers must make reasonable efforts to enter into agreements with public utilities when engaging in activities that are likely to affect the operations of the utility, such as installing facilities on their infrastructure, as required by clause 11 of schedule 3 in the Act". TMR supports the intent of clause 11 of schedule 3 in the Act, but has concerns about its application, particularly where commercially focussed carriers and commercially focused owners of the poles and wires are concerned. TMR has concerns that delays could occur to road construction projects if the parties cannot agree. Could some time limit be input into this amendment to specify how quickly agreements must be made with other utilities? We recommend that if the activities involve land under the ownership and control of TMR, that agreements must be made within the time period specified by TMR's notification, and that any agreements must include meeting safety and security for critical infrastructure requirements.

## Issues

The following issues have been identified in relation to the change proposals and through TMR's experience in working with telecommunications providers under the current legislative framework.

- The increase of overhead cable diameter to greater than 30mm could result in the following additional impacts:
  - a. a need to increase pole sizes/numbers with the resulting reduction in road safety
  - b. the potential for the heavier cables to sag and reduce clearance above roads
  - c. increased wind loadings on poles
- As per previous versions of the Telecommunications Act there are no references to road corridors and the potential for impacts on road works or road authorities.
- One measure which could ease road authority concerns in regard to low impact facilities, might be to place an expiry date on the facility. That is, any low impact facilities could be deemed redundant after say 15 years and be relocated at no cost to the road authority. Road Authorities should then be more amenable towards the installation of such facilities.

- The proposal involves attaching cables to existing poles. The photos are showing the cables are below the existing electricity cables. TMR needs to ensure that clearances above roads and driveways are not compromised. Carriers should be expressly required to maintain safe minimum clearances over roads and driveways, especially if the thicker and presumably heavier cables will 'droop' more. Carriers should also be required to ensure the existing poles can take the additional structural and wind loads imposed by the thicker cables and associated infrastructure.
- TMR does not want NBN attaching to "substandard" poles. The problem TMR has is that there are many electricity poles located within the current clear zone of the road. Many poles were originally installed (60s/70s/80s) when the traffic volumes were lower. Clear zones increase as traffic volumes increase – and in some cases parking lanes have been changed into through lanes, placing vehicles closer to the poles. As poles are replaced, they are supposed to be progressively moved outside the clear zone or undergrounded to improve road safety. TMR is concerned that if new cables are on the old poles, it may delay their relocation. If they do attach to substandard poles, telecommunications providers (such as NBN) will need to be responsible for the full cost of relocating in the future (if needed by TMR, Energex or Ergon).
- P15 does state that if all the electrical cables are removed from the pole, that the telecommunication cables will be removed as well. However, it doesn't say who will be responsible for paying for this. (IE if the electricity lines are removed because TMR is relocating the pole for roadworks, or undergrounding services – does this mean that the telecommunications provider will relocate the telecommunications infrastructure at its cost at this time? – or are TMR potentially liable for costs for relocating?). TMR suggest the carriers should be responsible for relocating cables and associated infrastructure where they have been given reasonable notice (at least 6 months) by a road authority that the poles have to be relocated to accommodate road works.
- There needs to be clarification around what/who is a National Network for wholesale use. In some areas it points to MTM NBN and other comparable networks. If it is used for commercial users it should not be viewed as a wholesaler in a non-discriminatory basis.
- A clarification on what constitutes planning laws (2.1) as against (2.1.2) must use good engineering practices, protect the safety of people and property, interfere with other users of the land as little as possible. State safety regulations should apply. Traffic safety is important to TMR.
- TMR concerns also include how the expanded cables get onto the pole. What happens when NBN (or a carrier) go to construct, do they apply for a traffic permit or any other permit of entry? TMR expects they will want right of entry to construct without notice, this could cause road safety and traffic efficiency problems on our network, as was the case with the fibre to the node rollout in South Burnett.
- In rural areas, TMR already have issues with Telstra Infrastructure running longitudinally in road reserves, some only a couple of metres above the ground and intertwined with vegetation. This is making it difficult for TMR to conduct controlled burns or normal road maintenance without damaging the wires. The impacts on the wires of an increased size is a concern for TMR.

- Proposed removal of geographical restrictions. Some of the above ground infrastructure such as the Fibre-To-The-Node (FTTN) cabinets are not frangible. On safety grounds, these cabinets need to be outside the clear zone and not be too close to cycle ways as per TMR's Road Planning Design Manual and Austroads guidelines. At a recent meeting between TMR and NBN, NBN believes they are exempt from this requirement. This is a safety concern for the community and TMR.
- TMR needs to have a say over the location of the overhead cables. For example, on the Flinders Highway, TMR has requirements for overhead cables to be 12m above the roadway to allow safe passage of Over Size Over Mass Vehicles. Rural locations are also a concern. Clause 11 of Schedule 3 part 1 Div 5 should still apply, but requires amendment as submitted.
- Amendment 4 – changes the approval time from 12 months to no time limit. TMR needs to maintain the 12 month period because that is the length of time that TMR can be certain of proposed Queensland Transport and Roads Investment Program (QTRIP) projects and developer projects that may impact or have an impact on the proposed installation by NBN. The conditions that are being developed for all Public Utility Providers (state and federal) has a 12 month approval time period. QTRIP includes Australian Government contributions.
- Amendments 17 – 19; in particular 19, refers to a 1.3 cubic metre installation of Fibre Cabinets on e.g.; Traffic Lights, Bus Stops and Pay Phones, with *good engineering practice*: what makes for good engineering practice? Will NBN and other carriers accept TMR engineering practices? Can this be included in Federal legislation and determinations?
- Installation within conduits within structures is not, and should not be, classified as underground (or low impact).
- P15 "To improve capacity on networks where an existing cable exists" This should be clarified as it is too open as a statement.
- Overall the paper does not encourage the use of greater clarity or agreement between utilities and carriers. The amendment should provide an opportunity for utilities and NBN to form agreements on the following contentious areas:
  - Underground vs overhead
  - Use of bridges and other structures
  - Areas along high speed motorways
  - Compliance and agreement with safety and security (for critical infrastructure) regulations and requirements,
  - Licence fees for use of conduits and the increase in operating/maintenance costs.
- TMR is aware of token efforts by carriers to reach agreement and TMR suggests that road authorities should be able refer matters to the telecommunications ombudsman if the carrier's proposal creates a safety problem for road users and/or the carrier's workers during installation or maintenance.

TMR accepts that you may publish TMR's feedback and the "Impacts" as attached.

If you have any questions, please contact me on telephone (07) 3066 1431 or email [tom.k.orr@tmr.qld.gov.au](mailto:tom.k.orr@tmr.qld.gov.au).