

To the Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601

Submission response—Possible amendments to telecommunications powers and immunities

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Yes

Date of submission

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Logo of organisation—if an organisation making this submission

Brookfield
Rail

Name and contact details of person/organisation making submission

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General comments

Brookfield Rail (BR) is the below rail operator of the freight rail network in the southern half of Western Australia. BR operates the network under long term leases from the Government of Western Australia and which are now administered by the Public Transport Authority (PTA).

The *Telecommunications Act 1997* (Cth) ('Telco Act'), Schedule 3, Clause 17 contains a strict liability provision:

“Notice to owner of land--general

(1) Before engaging in an activity under Division 2, 3 or 4 in relation to any land, a carrier must give written notice of its intention to do so to:

(a) the owner of the land; and

(b) if the land is occupied by a person other than the owner--the occupier.

(2) The notice must specify the purpose for which the carrier intends to engage in the activity.

(3) The notice under subclause (1) must contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of anything done by a carrier in engaging in the activity, compensation may be payable under clause 42.

(4) The notice must be given at least 10 business days before the carrier begins to engage in the activity.

...

(5) A person may waive the person's right to be given a notice under subclause (1).”

These provisions require a Telco to not only give the required notice to the owner, the PTA, but also to BR as the occupier. The 10 day’s notice is a strict requirement and is already extremely tight when the installation area, rail timetabling and safety issues all need to be considered. BR would strongly oppose any reduction of that notice period.

It is contended by some that the Telco Act, being Commonwealth legislation, overrides the state based legislative requirements of the *Rail Safety Act 2010* (WA). With respect this is simply incorrect.

BR is a ‘public utility’ for the purposes of Schedule 3 of the Telco Act and as such, carriers must, by virtue of clause 11 of Schedule 3, make reasonable efforts to enter into an agreement with a public utility that makes provision for the manner in which the carrier will engage in an activity covered by Division 2, 3 or 4 and which is likely to affect the operations of the utility. Carriers are then obliged to comply with any agreement made under this section.

Further, clause 10 obliges a telecommunications company (‘Telco’) to take all reasonable steps to protect the safety of persons and property and to ensure that its activities interfere as little as practicable with the operations of a public utility.

The Telco Act does not override all State legislation. Clause 36 of Schedule 3 of the Telco Act provides that Divisions 2, 3 and 4 do not operate so as to authorise an activity to the extent that the carrying out of the activity would be inconsistent with the provisions of a State law. Clause 37 lists the types of State law from which Telcos are generally exempt, however these are limited to such matters as town planning; local government functions and use of the land. The combined effect of clauses 36 and 37 is that Telcos cannot carry out works in BR’s rail corridor in spite of the provisions of the *Rail Safety Act 2010* (WA).

BR considers fibre cable installation and other telecommunications installations will adversely impact its ability to carry out its maintenance obligations under the terms of its lease agreement with the PTA. Further the installations could prevent non-operational rail lines being renewed to become operational should that be required in the future. It is BR’s policy that parallel installations not be permitted within its railway corridors for these reasons.

Responses

The Australian Government seeks views on possible amendments to telecommunications carrier powers and immunities. In particular, the Government seeks views on:

Proposed amendments to the Telecommunications (Low-impact Facilities) Determination 1997

1. Definition of co-located facilities

- 1.1 Are there any issues with this proposed clarification to the definition of co-location?
No

2. Local government heritage overlays

- 2.1 Are there any issues with this clarification in relation to local government heritage overlays?
No comment

3. Radio shrouds as an ancillary facility

- 3.1 Should radio shrouds be considered ancillary facilities to low-impact facilities, or should radio shrouds be listed as distinct facilities in the Schedule of the LIFD?
No comment
- 3.2 If listed as distinct facilities in the Schedule of the LIFD, should there be any criteria for radio shrouds, for example in terms of size and dimensions?
No comment

4. Size of radiocommunications and satellite dishes

- 4.1 Are there any issues with permitting 2.4 metre subscriber radiocommunications dishes (or terminal antennas) in rural and industrial areas (LIFD Schedule, Part 1, Item 1A)?
It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations
- 4.2 Are there any issues with permitting other 2.4 metre radiocommunications dishes in rural and industrial areas, including those located on telecommunications structures (LIFD Schedule, Part 1, Item 5A)?
It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

5. Maximum heights of antenna protrusions on buildings

- 5.1 Is a 5 metre protrusion height acceptable, or is there a more appropriate height?
It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations
- 5.2 Are higher protrusions more acceptable in some areas than others? Could protrusions higher than 5 metres be allowed in industrial and rural areas?
It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

6. Use of omnidirectional antennas in residential and commercial areas

- 6.1 Are there any issues with permitting omnidirectional antennas in residential and commercial areas, in addition to industrial and rural areas?
No comment

7. Radiocommunications facilities

7.1 Does the proposed approach raise any issues?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

7.2 Are the proposed dimensions for these facilities appropriate?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

8. Equipment installed inside a non-residential structure in residential areas

8.1 Should carriers be able to enter land (including buildings) to install facilities in existing structures not used for residential purposes in residential areas?

No comment

9. Tower extensions in commercial areas

9.1 Are there any issues permitting tower height extensions of up to five metres in commercial areas?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

10. Radiocommunications lens antennas

10.1 Is lens antenna the best term to describe this type of antenna?

No comment

10.2 Are 4 cubic metres in volume and 5 metres of protrusion from structures appropriate?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

10.3 Should this type of antenna be allowed in all areas, or restricted to only industrial and rural areas?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

11. Cabinets for tower equipment

11.1 Are there any issues with the proposed new cabinet type?

Generally no but it would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

12. Size of solar panels used to power telecommunications facilities

12.1 Are there any issues with permitting 12.5 square metre solar panels for telecommunications facilities in rural areas?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

13. Amount of trench that can be open to install a conduit or cable

13.1 Are there reasons not to increase the length of trench that can be open at any time from 100m to 200m in residential areas?

No comment

- 13.2 Is 200m an appropriate length, or should the length be higher if more than 200m of conduit or cabling can be laid per day and the trench closed?

No comment

14. Cable & conduit installation on or under bridges

- 14.1 Are there any issues with allowing cable and conduit on bridges to be low-impact facilities?

Yes, in relation to railway bridges. BR considers fibre cable conduit and other telecommunications installations will adversely impact its ability to carry out its maintenance obligations under the terms of its lease agreement with the PTA. Also attachments cannot be added to railway bridges without detailed design of the mounting arrangements, taking consideration of the construction details and structural arrangements of that particular bridge.

15. Volume restrictions on co-located facilities

- 15.1 Are there any issues with removing volume limits for adding co-located facilities to existing facilities and public utility structures in commercial areas?

No comment

- 15.2 Are there any issues with permitting new co-located facilities that are up to 50 per cent of the volume of the original facility or public utility structure in residential areas?

No comment

- 15.3 Is another volume limit more appropriate in commercial or residential areas?

No comment

- 15.4 Should alternative arrangements for co-located facilities be developed in the LIFD?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

16. Updates to environmental legislation references in the LIFD

- 16.1 Are there any issues with the proposed updates?

No

- 16.2 Are there any further suggestions for updates to terms and references in the LIFD?

Ensure there is no change to the *Telecommunications Act 1997* (Cth) ('Telco Act'), Schedule 3, Clause 17

Proposed amendments to the Telecommunications Code of Practice 1997

17. Clarify requirements for joint venture arrangements

- 17.1 Are there any issues with making it clear in the Tel Code that only one carrier's signature is required on documents for facilities being installed as part of a carrier joint venture arrangement?

Would this not depend on the terms of the joint venture?

18. LAAN objection periods

- 18.1 Is it reasonable to end the objection period for low-impact facility activities and maintenance work according to when the notice was issued, rather than the date work is expected to commence?

Yes but only if extended to at least 10 days. For example, whilst the Public Transport Authority of WA is the 'land owner' of the rail freight corridor, Brookfield Rail is the occupier. If notice is only

given to the land owner, it is unlikely that it will be moved through the PTA to the relevant people within BR and sufficient time be available to lodge an objection with only 5 day's notice. If it is limited to 5 days it is likely that blanket objections would become the norm in order for sufficient time to enable a properly formulated objection.

- 18.2 Is 5 business days from the receipt of a notice a sufficient time period for land owners and occupiers to object to carrier activities where carriers have given more than 10 days' notice about planned activities?

No, definitely not

19. Allow carriers to refer land owner and occupier objections to the TIO

- 19.1 Are there any issues with allowing carriers to refer objections to the TIO before land owners and occupiers have requested them to?

Yes, if that means the carrier can circumvent the consultation and resolution requirement

20. Updates to references in the Tel Code

- 20.1 Are there any issues with the proposed changes?

No comment

- 20.2 Are there any further suggestions for updates to the Tel Code?

No comment

Possible amendments to the *Telecommunications Act 1997*

21. Allowing some types of poles to be low-impact facilities

- 21.1 Is it reasonable for poles in rural areas for telecommunications and electricity cabling for telecommunications networks to be low-impact facilities?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

- 21.2 Should low-impact facility poles be allowed in other areas, or be restricted to rural areas?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

- 21.3 Is the proposed size restriction of up to 12 metres high with a diameter of up to 500mm suitable?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

- 21.4 Would the existing notification and objection processes for land owners and occupiers in the Tel Code be sufficient, or should there be additional consultation requirements?

There should be additional consultation requirements so that both the land owners and the occupier are part of the consultation and resolution process

22. Portable temporary communications facilities

- 22.1 - Are there any issues with making portable temporary communications equipment exempt from state and territory planning approvals under certain conditions?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

22.2 - Are there any suggestions for appropriate conditions for the installation of COWs and SatCOWs, such as circumstances in which they can be used and timeframes for their removal?

No comment except that it would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

22.3 - Should the Act be amended to remove any doubt that MEOWs can be installed using the maintenance powers or another power under Schedule 3 of the Act?

No comment

22.4 - Are there any suggestions for appropriate conditions for the installation of MEOWs if the maintenance powers are amended?

No comment except that it may be of concern is close to rail corridor or rail infrastructure and in particular signalling or communications installations

23. Replacement mobile towers

23.1 Is the proposal reasonable?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

23.2 Is 20 metres a suitable distance restriction for replacement towers?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

23.3 Is 12 weeks a reasonable maximum time period for installation of replacement towers?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations

24. Tower height extensions

24.1 Are one-off 10 metre tower height extensions suitable in commercial, industrial and rural areas, or only some of these areas? If they are only suitable in some areas, which are they and why?

It would depend on the placement and may be of concern if close to rail corridor or rail infrastructure and in particular signalling or communications installations