

ALGA Submission to the consultation paper on improving the telecommunications powers and immunities framework

Via email to: powersandimmunities@communications.gov.au
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The Australian Local Government Association (ALGA) welcomes the opportunity to make comments on the Department of Infrastructure, Transport, Regional Development and Communications Consultation Paper on *Improving the telecommunications powers and immunities framework*, which was released on 16 September 2020.

ALGA is the voice of local government in Australia, representing around 537 councils across the nation. In structure, ALGA is a federation of state and territory local government associations. This submission has been prepared in consultation with ALGA's members and should be read in conjunction with any separate submissions received from state and territory associations, as well as individual councils.

General comments

ALGA reiterates many of the comments it made in its submission to the first consultation on possible amendments to the telecommunications powers and immunities regime, in July 2017, particularly in relation to balancing the rollout of telecommunications infrastructure with planning, environmental and safety issues.

In 2017, the issue which caused the most concern to local government was the proposal to install cables and conduits on bridges as low impact facilities. ALGA stated at the time and strongly reiterates the point that bridges are complex structures and any alteration may have significant impacts on the safety and function of the structure. This proposal is again mentioned in the current consultation paper, albeit very briefly (page 8) under the theme of "providing services in line with community expectations". State and Territory Associations strongly object to any reclassification of bridges as a low impact facility. The functional integrity of bridges must be the paramount consideration.

ALGA's position over many years has been the need to find an appropriate balance between the demand for better mobile services and the deployment of modern and effective technology, with appropriate planning laws to protect public safety and limit environmental impacts, as well as to allow community input into the planning process.

While carriers' desire to speed up approval processes, reduce their costs and reduce timeframes, this needs to be balanced against planning laws which are designed to protect public safety, limit impacts on the environment and third-party infrastructure assets and to ensure that the community is consulted. Industry expressing concerns that "descriptions in the LIFD are outdated and not flexible enough to support the development of new technologies" is consistent with the push by carriers over many years to roll out infrastructure outside the planning process.

Section 3 of the consultation paper contains the proposal by carriers to meet the community's expectation of improved coverage through better facilities, **where safe to do so**. This statement represents an inherent conflict. Who will determine whether it is safe to do so? If left to carriers to determine safety, how can safety be assessed and assured?

ALGA believes that ensuring safety is part of the role of local government – namely to ensure public safety and structural integrity amongst other considerations. Whittling away the role of local government through ever increasing structures being classified as LIFD, will erode both public safety and community consultation. Also, it should not be assumed that improved coverage will be welcomed by communities at the expense of safety or visual amenity.

The Low Impact Facilities Determination (LIFD) should not be used to override important planning considerations and community concerns. Any new telecommunications infrastructure should be assessed and approved by Local Government. Slim poles or smart poles (also referred to as Multi-Function Poles) are a substantial piece of infrastructure and issues of visual amenity, siting, heritage concerns, safety considerations, structural integrity and potential visual interference to traffic are important reasons that this infrastructure should not be considered low impact and should be determined by the planning process. The suggestion that these structures should be considered a low impact facility raises serious concerns for local government and ALGA would strongly object to any such infrastructure being installed without council approval.

Where telecommunications infrastructure is installed without the local council represented as a key stakeholder in the planning process, it has the potential to adversely impact and compromise future development, master planning or general strategic planning that the council might be concurrently undertaking.

Councils have expressed the additional concern that over and above issues of poor engineering or poor installation, councils struggle with unacceptable contract terms and installation which occurs in a way that the councils do not want (even if good quality), but which cannot be stopped under the Telecommunications Act because it is designated a low impact facility.

Some proposals in the Consultation Paper have caused serious concerns in the local government sector, insofar as they propose to override important planning, consultation and safety assessment provisions. Local governments have a legislative role in assessing developments and infrastructure which will impact the local community, to ensure there are no adverse impacts from a telecommunications facility. Local government's planning and assessment role involves ensuring the physical location, design and structural integrity are appropriate and that issues such as heritage and environmental protection are adhered to.

Despite these concerns, there are some very positive and welcome proposals in the paper, particularly the creation of a primary safety condition and extension of notification timeframes, requirement for engineering certification and standard notifications across industry.

In relation to specific numbered proposed amendments, ALGA makes the following comments:

1. Safety and Notification

A. Creation of a primary safety condition

ALGA fully supports the proposal that safety of telecommunications facilities is paramount, and the focus on maintaining the structural integrity of infrastructure and assets on which telecommunications equipment is installed. Ensuring the structural integrity of telecommunications infrastructure/assets has been an ongoing area of concern for local government. Local government would like to see existing safety obligations made more explicit, standards to be specified and enforceable. Increased inspection and maintenance regimes in agreements between carriers and public utilities is also supported.

Ideally this would be through regulation which is enforceable.

B. Standard notifications across industry

ALGA supports standard notifications across industry, as landowners need information which contains the appropriate amount of detail and is provided in a timely manner. This will allow better decisions to be made on the impact of proposed activities. This could also reduce the supplementary work that a council would need to undertake if inadequate information is provided, resulting in quicker decision making. Feedback by the Local Government Association of South Australia (LGASA) is that some notification information should be made available by carriers in other prevalent languages other than English, as English may not be the first spoken language by some landowners.

ALGA supports an industry code registered by the Australian Communications and Media Authority (ACMA).

C. Withdrawal of notifications

ALGA supports the withdrawal of a notification if a proposed activity is cancelled or indefinitely delayed. A new notification should be issued when work again commences/ is rescheduled. This is good business practice and provides the community with certainty about development intent. This proposal would assist in reducing costs and inconvenience to local government.

ALGA supports an industry code registered by ACMA, rather than making it a non-regulatory responsibility of a carrier. If it were a non-regulatory requirement of carriers, there is no certainty about how this would be monitored or enforced.

D. Requirement to provide engineering certification

ALGA fully supports this requirement, as structural integrity and safety are of primary concern for local government. Certification that equipment or structures meet engineering requirements will share responsibility more fairly. If the installation is pole-mounted, pole location and pole frangibility is particularly important in road safety. Local government supports defined time limits being imposed for the lodgement of engineering certificates. Landowners have a right to know within a reasonable timeframe that equipment has been installed correctly and to Code requirements. This is particularly important in road reserves.

ALGA supports an industry code and specification of a time limit in which to lodge the engineering certificate. The Local Government Association of Queensland (LGAQ) proposes that in addition, in the interests of public safety, there should be a formal definition of “good engineering practice” encompassing national, state/ territory and local road management standards applying to works, with provision for sanctions.

E. Extending notification timeframes

ALGA fully supports the extension of the minimum notification timeframe for utilities and road authorities from 10 to 20 days and the objection period from 5 to 10 days. Local government has repeatedly expressed concerns regarding the limited time to assess proposals, particularly with availability of staff to undertake site inspections and prepare reports. The LGASA has advised that it supports the extension of timeframes to all landowners, not just public utilities and road authorities.

Local government has maintained that being given as much notice as possible by carriers allows councils to schedule other works to coincide with carrier works, leading to less inconvenience for the public and cost savings. It is also good business practice to engage with stakeholders in a timely manner and provide as much notice as possible. In some cases, carriers would have a forward planning schedule which would allow them to give much longer notification than 20 days.

ALGA is of the view that greater certainty would be achieved if this was a legislative requirement.

2. Objections and protections

A. Clarifying the objections process for landowners

ALGA would support the development of factsheets to clarify the process and provide guidance to landowners. The factsheets should be developed for different audiences, such as landowners, councils and the community, and made available in a number of ways/communication channels. LGASA suggests that carriers could include a reference or link to the factsheets in the notice given to the landowner or occupier.

B. Allowing carriers to refer objections to the TIO

ALGA is comfortable with this proposal. If there is little chance of a resolution it is reasonable for a carrier to refer a matter to the TIO. As the consultation paper points out, there is already a disincentive for disputes to be referred to the TIO by carriers, as the cost to resolve disputes is borne by carriers. Resolving a dispute between the parties without reference to the TIO is preferable from both a cost and stakeholder engagement model.

B. Removal of redundant equipment

ALGA has raised the issue of removal of redundant equipment in previous submissions. If equipment no longer transmits it should be removed within a reasonable maximum timeframe to reduce the structural load on assets, and potentially allow for other equipment to be installed in its place (particularly with the larger volume of equipment which will be required for 5G). Only carriers are currently allowed to remove redundant equipment. LGASA has suggested it may be worth investigating the possibility of carriers being able to enter into an agreement with the landowner to provide rights to the landowner to remove redundant equipment, but they would have to be compensated for the cost of removing the equipment.

ALGA supports making the removal of redundant equipment a mandatory requirement in an Industry Code.

3. Facilitating services in line with community expectations and to support economic growth

A. Improve coverage outcomes through better infrastructure, where safe

B. Improve coverage outcomes through tower extensions

C. Allowing deployment on poles rather than on utilities (slim poles)

D. Encourage the co-location of facilities

ALGA reiterates the comments it made in its submission to the first consultation on possible amendments to the telecommunications powers and immunities regime, in July 2017, in relation to the proposals in this section. Each of the proposals (except the proposal on co-location of facilities) seeks to increase the current maximum permissible size of telecommunications equipment or introduce new LIFD categories.

The proposals in this section are exactly the same proposals as those put forward in 2107. Local government objected to each of the proposals in 2017 and that position has not changed. Local government continues to have serious concerns about extending the LIFD and classifying ever larger facilities as low-impact, which are able to be constructed without being subject to planning requirements.

The increase in proliferation of telecommunications equipment with the rollout of 5G on state and local government land and infrastructure and greater levels of co-location are yet to be fully understood. Local government is of the view that this needs to be managed before it gets out of control. Local government needs to be part of the planning process in relation to the extent, form and location of this infrastructure. Installations in road corridors are of particular concern to local government from a safety perspective and should be approved by the responsible road authority.

Local government would also reiterate the need to balance the rollout of telecommunications infrastructure with planning, environmental and safety issues. Communities want telecommunications infrastructure but not when it sacrifices their community amenity. Some councils have been told by their communities that they would choose a slightly reduced broadband speed, rather than lose their visual amenity, heritage places and environment. It cannot be automatically assumed that communities are willing to accept more infrastructure to increase their broadband speeds.

In relation to tower height extension in industrial areas, a few councils have indicated that they could support this, as long as it could be ensured that there would be less telecommunications infrastructure overall – which is difficult to predict with any certainty. Other councils and State and Territory Associations have rejected this proposal outright and object to inclusion of this provision as a low impact facility. Wherever tower extensions do occur, they should be done with minimum impact.

The Local Government Association of Tasmania (LGAT) advises that it has received representations from councils who strongly object to any further extensions of the low impact facilities determination. One council gives the example of a pedestrian mall which has been designed to have all services underground except for light poles. It has been advised that in order to install a 5G antenna on one of the light poles, Optus would also need to install a cabinet (Appendix A has a photo of the light pole and the cabinet). While council does not object to the antenna, it does object to the cabinet, as it has spent considerable money to underground other services. Council maintains that the antenna can be installed without the cabinet, but for the carrier it is cheaper to install the antenna and cabinet. Council will not be able to object to the cabinet, as it falls under the LIFD. It is expected that other carriers will come along after Optus and install their own cabinets next to other mall poles, to which council will not be able to object either.

The deployment of 5G will lead to a proliferation of telecommunications equipment, which is also of concern to local government. This proliferation will occur on state and local government managed

land and infrastructure. If amendments in this section are adopted, it is likely to result in very significant changes to the nature of our cities and the control councils can have over clutter and ugly pole development.

Advice from a Tasmanian council is that two carriers cannot share a 5G pole (this does not include a smart pole/multi-function pole which is designed for multiple uses). The council says this will lead to a proliferation of poles, regardless of council preferences for location or the undergrounding of services. If the carriers decide to install pole and cabinet at cheaper cost, council has no ability to influence or prevent the clutter of this infrastructure. Malls, footpaths, parks could see proliferation of new poles and cabinets wherever the carrier decides to put them. Additionally, council would need to gain permission to be able to use the poles for its purposes such as street lighting etc. The council has said *“With 5G, antennas are located close to the ground in a mesh, each node just a few hundred metres from its neighbours. And squeezed between any two Telstra nodes, we’d expect to see an Optus antenna, a Vodafone antenna and one for anyone else who gets themselves registered as a carrier (Amazon, Google, autonomous vehicle companies... everyone who wants to have a spatial mesh over the city).”*

While ALGA is cognizant of the demand for better mobile and data services, which in turn brings increased pressure to expand the number of telecommunications facilities, communities have expressed concerns through their local governments over the Low Impact Facilities Determination (LIFD) in terms of adequate community consultation and adequate remediation after works have been completed.

The proposals in this section cause considerable concern to the local government sector, and local government restates the concerns it expressed in the 2017 consultations. Structural integrity, safety, environmental protection and heritage issues are all assessed by local government through the planning process. Community consultation is an important aspect of local government’s role in assessing projects. The (LIFD) should not be used to override important planning considerations and community concerns.

It is also important to note that what is considered a “minor” change to the LIFD is a subjective interpretation. ALGA and member Associations believe that some of these measures would have a significant impact, and that as a general principle, any facility or activity which has an impact on a local government structure should be assessed by local government. Whether the impact would be “minimal” or “minor” and what level of risk may be generated, can be assessed only on a case by case basis.

The argument that increasing the height of existing infrastructure could reduce the visual impact because fewer antennae may need to be deployed overall would on the surface seem logical. However, there is no evidence that this will occur or any guarantee that carriers will not simply install more antennae at greater heights and the particular circumstances and site conditions in the local area may also necessitate a more locally responsive solution which the blanket standards do not account for.

ALGA continues to have concerns about increasing antennae projections from 3 to 5 metres. Is there concrete evidence that the 3 metre antennae are inadequate?

Similarly, is there evidence that the existing 1.8 metre satellite dishes are inadequate and that the 2.4 metre dishes will substantially increase services? What percentage of improvement will there be?

Colour matching does not change the fact that these structures are larger. The issue of concern for local government is that these proposals are seeking to push larger devices into the LIFD. Dishes of 2.4 metres are not low impact.

The consultation paper argues that tower extensions, if extended to commercial areas, would also result in fewer towers being deployed overall. Local government would again postulate that there is no evidence that this will occur or any guarantee that carriers will not simply install more antennae at greater heights.

Local government would strongly suggest that evidence to show there will be significant benefit from extending tower heights and dishes needs to be provided to justify the assumption that this is the case, prior to making any changes to the LIFD.

Slim poles and smart poles (also referred to as Multi-Function Poles)

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. In our 2017 submission we said that allowing 12 metre towers would remove any incentive for carriers to consider underground cabling as an alternative. The current proposal says that these slim poles accommodate equipment and antennae on or within the structure. Depending on how many additions there are to the pole, they will influence the structural integrity and safety of the pole.

Additionally, what is to guarantee that the 12-metre slim pole will not be increased by 5 metres in the next round of powers and immunities consultations?

The purpose of slim poles is to house multiple telecommunications and smart city technologies in the same unified construction, cleaning up street clutter and maintaining a high standard of amenity in doing this (such as a range of 4G and 5G small cells, public WiFi, CCTV, electric vehicle charging,

general power outlets, speakers, lighting, traffic and pedestrian signals, wayfinding, dynamic signage and smart controls and sensors). Council is clearly the appropriate party to manage this diverse range of public infrastructure and should not be beholden to a carrier for each addition or modification to a slim pole. This would effectively mean local government would lose control of the future planning of “smart cities” to carriers and other third parties.

If all players act individually, there will be no long-term planning for towns and cities, it will lead to higher costs, more above ground (cheaper) structures and decreased public amenity. The situation where carriers own a pole, not share the pole with other carriers and councils need to pay to use it is a recipe for uncontrolled proliferation of telecommunications infrastructure.

Telecommunications infrastructure needs to be rolled out in a coordinated way using shared development models and be managed so that there is no duplication and a reduced risk of unnecessary and unsightly deployment of infrastructure. This needs to be enshrined in legislation and involve DA approval, not in a low-impact definition. Once a proliferation of haphazard privately owned poles and other infrastructure is installed in cities, it will be too late and too expensive to rectify.

In terms of co-location of telecommunications facilities, the ALGA position has been to support co-location where possible. We have supported open access and co-location in greenfield sites, so that they are designed and built to be capable of supporting at least two further mobile network operators.

In terms of volume restrictions on co-located facilities, while local government is supportive of adding facilities to an existing facility, if a facility is added to a Local Government structure it should be assessed by local government. Structural integrity is of utmost importance from a local government planning perspective. The LGASA is of the view that the increased limit from 25% to 50% is excessive in respect to both visual clutter and structural integrity. Any new infrastructure should be assessed and approved by local government.

Local Government New South Wales (LGNSW) has advised that it objects to any amendments to carrier powers and immunities which are likely to exacerbate existing risks posed by carrier powers to council drinking water supply infrastructure and councils’ ability to provide safe drinking water at all times. The location of telecommunications equipment on the assets of water utilities, particularly on or around drinking water in reservoirs, poses a significant risk to the ability of water utilities to provide safe drinking water and to protect public health. Structural damage caused by the installation of telecommunications facilities on water assets can result in contamination by insects, rodents, birds and associated faecal matter, which can lead to water contamination. LGNSW further notes that carriers will often ignore Section 8 of Schedule 3 of the Act (do as little damage as practicable) and Section 11 (carriers enter into an agreement with a utility on how the carrier engages in that activity).

Conclusion

While ALGA is supportive of the proposals in Sections 1 and 2 of the Consultation Paper, ALGA and the State and Territory Local Government Associations believe that many of these proposed changes in Section 3, to reduce or eliminate oversight, have the potential for adverse consequences – in terms of structural integrity, safety, urban design and interference with other infrastructure.

Strategic and local plans and planning legislation exist for a reason. Insufficient justification and evidence have been provided to support the assumption that a larger structure will mean that fewer structures overall will be built in the future.

Local government would strongly recommend that evidence to show there will be significant benefit from extending tower heights and dishes needs to be provided to justify the assumption that this is the case, prior to making any changes to the LIFD.

Allowing carriers autonomy to install “better facilities, where safe to do so”, as low-impact facilities, is in local government’s view, likely to lead to increased safety issues. Without an independent assessment of “where it is safe to do so”, there is no guarantee that safety will be ensured. This is the role of local government under the Telecommunications Act. Extending the definitions of LIFD undermines the legislated role of local government to review telecommunications infrastructure.

Telecommunications infrastructure needs to be rolled out in a coordinated way using shared development models and be managed so that there is no duplication and a reduced risk of unnecessary and unsightly deployment of infrastructure. This needs to be enshrined in legislation and involve DA approval, not in a low-impact definition.

ALGA and member Associations believe that some of the measures proposed would have a significant impact, and that as a general principle, any facility or activity which has an impact on a Local Government structure, should be assessed by Local Government. Whether the impact would be “minimal” or “minor” and what level of risk may be generated, can be assessed only on a case by case basis.

ALGA further believes that regulation via a Code of Conduct which is enforceable is the preferable method of ensuring carrier activities are monitored and enforced.

It should not be assumed that community expectations are for more, larger infrastructure to increase their broadband speeds, at the expense of visual and community amenity.

Please contact [REDACTED]
if you require further information.

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Figure A: Pedestrian mall with services underground except for lights and some street furniture.



Figure B: In order to install a 5G antenna on one of the light poles (to which the council does not object) Optus have said they would also need to install a cabinet like the one below next to the pole. It is expected that the other carriers will soon arrive to put more cabinets next to the mall's other poles.



Figure C: Telecommunications overhead line installed by a telecommunications contractor in a tree.



Figure D: Telecommunications conduit installed through a water pipeline bracket.



Figure E: Telecommunication conduit resting on a transverse stressing bar, increasing oxidization of the bar, and preventing the road authority from undertaking maintenance (replacement of the bar). This bar is critical to bridge integrity and safety.