



16 October 2020

Rachel Blackwood
Assistant Secretary
Spectrum & Telecommunications Deployment Policy Branch
Department of Infrastructure, Transport, Regional Development and Communications

BY EMAIL: powersandimmunities@communications.gov.au
AND LODGED DIGITALLY

CONFIDENTIAL

Dear Ms Blackwood,

Submission re Improving the Telecommunications Powers and Immunities Framework

Monash University is one of Australia's largest universities and has extensive property assets across its four Melbourne campuses. A significant amount of telecommunications infrastructure is located at Monash sites, including facilities within and affixed to buildings, as well as standalone infrastructure.

We welcome this opportunity to participate in this round of public consultation. Our comments in relation to the proposed improvements to the powers and immunities framework under the *Telecommunications Act 1997* (Cth) (**Act**) and other matters are as follows:

1. Safety and notification:

- A. **Creation of a primary safety condition:** Monash supports the proposal. The current legislative framework enables telecommunications carriers (**Carriers**) to install a broad range of equipment without landowner (**Owner**) consent. This leads to concerns that Carriers and subcontractors aren't following necessary safety obligations. We have had experience of Carriers and their subcontractors whose priority appears to be completing their activities as quickly as possible, rather than in a way which clearly demonstrates strict compliance with applicable safety obligations. Imposing a primary safety condition will help in emphasising the primary importance of ensuring Carrier activities are undertaken in a safe manner, and will provide clearer recourse where applicable safety requirements are not met.
- B. **Standard notification across the industry:** Monash agrees with the proposal for a standard form of Land Access Activity Notice (**LAAN**) notification to be provided by all Carriers.
- C. **Withdrawal of notifications:** Monash supports the proposal. A formal requirement that Carriers withdraw a LAAN if a proposed activity is cancelled or indefinitely delayed would be helpful, as follow-ups by Owners (in Monash's case university staff) are taking up valuable time. The Carrier who initiates the notification should be required under the Act to inform all LAAN recipients if the proposed activity will not proceed.
- D. **Requirement to provide engineering certification:** Monash supports the proposal. Engineering certificates are not only beneficial but critical to the safe and proper operation of a building and should be provided within one month after work is completed. A requirement for engineering certification should not enable a carrier to avoid also providing detailed engineering plans/design drawings with a LAAN prior to installation). In relation to such plans/drawings:
 - i. we are experiencing a general decline in drawing quality, which appears to be, at least in part, a result of the fact there is no agreed standard that they need to follow;

- ii. drawings are required to be prepared in accordance with industry best practice, yet there is no guidance in the Act or ancillary materials about what that standard exactly means. Carriers have in our experience tried to use photos of proposed facilities instead of suitable plans/drawings. We suggest Carriers be given examples of suitable detailed engineering plans/design drawings so it is clear to them what is required. We also suggest an amendment to Act to insert clear guidance for Carriers about what needs to be provided in terms of drawings/plans.
 - iii. a Carrier using "plain English" in a LAAN to describe the proposed activity (which we do not object to) should not be considered by Carriers as an acceptable substitute to supplying detailed plans (and "as built" drawings post-construction if required by an Owner).
- E. Extending notification timeframes:** This would be helpful. Monash supports a legislative amendment extending the current notification timeframes.

2. Objections and protections

- A. Clarifying the objections process for landowners:** Monash supports the proposal for LAANs to contain clearer details about objection processes. We also suggest having a formal process in place as to Carrier obligations to consult with Owners about objections, and an arbitration/dispute resolution process in addition to the TIO referral process.
- B. Allowing carriers to refer objections to the TIO:** We are comfortable with the proposal that Carriers can refer objections to the TIO on their own initiative, but a pre-condition to such a referral should be that Carriers must have used reasonable endeavours to engage with the objector during the 20-day consultation period to resolve the objector's issues.

[REDACTED]

We consider the Act's drafting is currently imprecise in relation to Carrier obligations in this respect. There seems little to stop Carriers from engaging in merely "token" consultation and awaiting a request from objectors to refer objections to the TIO.

TIO determinations are [REDACTED] an unsatisfactory method of achieving substantive changes to proposed activities, even where an Owner has detailed valid reasons for an objection.

- C. Removal of redundant equipment:** Monash supports a requirement that Carriers must remove redundant equipment, but suggests that this obligation should apply in all cases, not just where it is not "impractical to do so". Such removal is currently not regularly happening, and many university facilities already contain abandoned telecoms equipment. In other cases, Carriers have not completed their make-good obligations post-removal of equipment.

Carrier facilities, whether in use or not, can significantly constrain an owner's ability to fully utilise their property. A provision that requires Carriers to remove redundant equipment would be a legislative acknowledgement of this impact on an Owner's use of their property. We suggest the Act (and other relevant legislation including the *Criminal Code Act 1995 (Cth)*) be amended as required to enable Owners to:

- i. issue a formal warning notice to Carriers if redundant equipment is not removed by Carriers;
- ii. remove (or engage an authorised person to remove) the redundant equipment no sooner than 30 days after service of the notice; and
- iii. recover from the Carrier the Owner's costs of removing the redundant equipment plus a 10% contingency.

Amendments to the *Criminal Code Act 1995* would be aimed at ensuring it is not a criminal offence to remove redundant telecommunications facilities that are clearly no longer being used, and which no longer form part of the infrastructure of a telecommunications network. There

should be no risk of criminal sanction for removing equipment that is no longer required, particularly where its ongoing presence impacts upon the efficient use of limited space.

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

- A. Improve coverage outcomes through better infrastructure where safe. (Allow antenna protrusions to be extended to a height of 5 metres):** Monash does not support this proposal. It will enable Carriers to increase the size of low-impact facilities in an unreasonable way that exceeds any reasonable understanding of what could be considered genuinely low-impact. Requiring colour matching does not make a larger object disappear, and in the University's view would not adequately offset adverse visual amenity issues associated with large equipment. Existing antennas are already having a significant negative aesthetic effect on University property.
- B. Improve coverage outcomes through tower extensions:** Monash does not support this proposal. University campuses are usually, for the purposes of the *Telecommunications (Low-impact Facilities) Determination 2018 (Cth) (LIFD)* commercial areas. Permitting Carriers to install a tower extension of 5m in such commercial areas may impact views and detract from aesthetic appeal that all universities are trying to achieve. We consider that such tower extensions in commercial areas should continue to require approval from the Owner on a case-by-case basis. This would encourage Carriers to develop innovative design solutions and engage with Owners to achieve the goals of both parties.
- C. Allowing deployment on poles rather than on utilities:** Monash does not support this proposal. We doubt that slim line poles could ever be genuinely low-impact, even with constraints on height and placement. We note the proposal refers to slim line poles being up to 12 metres in height with an adjacent on-ground equipment cabin. There is also potential for antenna extensions to be installed on such poles. We do not consider that classifying such equipment as low-impact is consistent with the tenor of the Act and LIFD. Accordingly we suggest that the Act and LIFD continues to require Carriers to obtain Owner approval to install poles (as well as obtaining planning and other relevant approvals). In addition to the above, we do not support the proposal on the basis that terms referred to in it including "slim poles", "smart poles" and "small cell" are not adequately defined in the discussion paper.
- D. Encourage the co-location of facilities:** Monash supports the proposal in part. It makes sense for Carrier equipment to be co-located to reduce the visual impact of deployments. However we do not agree with the proposal to relax the current volumetric restrictions on co-located equipment in residential and commercial areas. In our view, Owner approval should continue to be required for co-located equipment that is in excess of the current volumetric requirements. Owners take into account matters including visual impacts and a building's structural capacity to take further load. Carriers should not have an unfettered right to increase the size of co-located infrastructure above these limits. (We are aware of examples of "small cell" installations in the USA that are significantly overloaded with co-located equipment and are an eyesore.) In any event, we also consider that the Act should be amended to provide clearer guidance to Carriers and owners about method(s) of calculating the volume of equipment proposed to be co-located.

4. Additional requests for updates to the Act

The proliferation of new Carriers and the impending widespread rollout of 5G facilities provide a significant opportunity for a thorough review of the Act beyond just the proposals set out in the discussion paper. We address some broader matters below:

A. Compensation

Monash seeks that the Act be amended to:

- require Carriers to obtain Owner approval to install any low-impact facilities, including subject to the owner's conditions; or alternatively
- include a clear mechanism and formula for calculating the compensation that persons are entitled to under clause 42 of the Act.

We consider that the clause 42 compensation entitlement should clearly state that an owner is entitled to receive rental from a Carrier equivalent to that which the Owner could obtain

commercially for the same site. The compensation mechanism should also set out the entitlement of Owners in respect of financial loss and damage attributable to any diminution in building/land value brought about by the installation of the telecommunications equipment.

The issue of compensation was raised in the 2017 public consultation as a significant problem for Owners and is still not being addressed adequately in the Act. We believe the imprecise nature of the current provisions in relation to compensation do not assist persons affected by Carrier activities [REDACTED]

B. Cumulative impact for owners of "popular" land

One matter of particular concern is the cumulative impact of multiple Carriers exercising their powers and immunities in respect of "popular" land. With several such sites, Monash regularly receives LAANs from Carriers intending to exercise powers to install low-impact facilities. The volume of these proposals has become disruptive to university operations, [REDACTED]

[REDACTED] In our experience, many low-impact facilities proposed by Carriers to be installed on Monash sites are not intended by Carriers to provide any direct service benefits to the university, its staff or students. As such, Owners of popular sites such as Monash suffer a disproportionate impact from Carrier activities compared to other [REDACTED]. The current means of definitively challenging a Carrier's purported exercise of its rights under the Act to install low-impact facilities - via the Court system - is usually prohibitively expensive for Owners to pursue. Amending the Act to address Owner concerns (particularly in relation to compensation and consultation) would provide Owners significantly greater comfort with the regime.

5. Conclusion

The primary function of universities in relation to buildings and property is to create spaces that support the functions of the university as a place of learning and the educational pursuits of our students and staff. We have a duty of care in respect of university building assets, and our many thousands of students, staff and visitors.

[REDACTED] We have no issue with telecommunications technology being available for our students and staff and have made considerable investments to ensure telecommunications services are enhanced across all campuses.

However we have at times experience a lack of cooperation and engagement from Carriers seeking to exercise their powers and immunities under the Act. This creates an environment of poor relationships and inefficient use of the university's resources. As an example, we are seeing less cooperation than in previous years from Carriers in the form of:

- Carriers providing substandard drawings and plans of proposed installations;
- Carriers' subcontractors not adhering to access and communication protocols agreed with Carriers, and

- [REDACTED]

This behaviour strains the relationship between Carriers and Owners.

Ultimately, we consider that the Act should be modernised to more equitably balance the rights of Carriers and Owners by requiring Carriers to more meaningfully engage with Owners, resolve existing drafting uncertainty and enhance the clause 42 compensation system.

Monash welcomes the arrival of 5G technology however deployment of the 5G network should not require any additional subjugation of Owner's rights in respect of their property. There must be a cooperative and fair system of deployment for all.

[Redacted]

Please feel free to contact me if you have any questions.

Yours sincerely,

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