

Improving the telecommunications powers and immunities framework

NBN Co submission

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Thank you for the opportunity to comment on the proposals set out in the 'Improving the telecommunications powers and immunities framework, Consultation Paper, September 2020' (**Consultation Paper**).

nbn's use of the powers and immunities framework has been crucial to **nbn**'s ability to meet the Federal Government's expectation that all Australians have access to very fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers as the rollout has progressed. **nbn** will continue to rely on these powers to ensure that upgrade paths are available as required as promised in **nbn**'s most recent Corporate Plan 2021. The flexibility of the multi-technology mix approach enables **nbn** to build the network using the technology best matched to each area of Australia, and the powers and immunities framework is relevant in this context.

The critical role **nbn** services play in the community and the value of connectedness has been highlighted in **nbn**'s recent bushfire recovery activities and during the COVID-19 crisis.

The Consultation Paper is seeking to address landowner concerns that may arise as mobile carriers rapidly deploy new 5G infrastructure. However, as demonstrated in this response, the powers and immunities framework is used by a number of different networks, both fixed and mobile, and as a result it is important to consider the impact of some of the proposals for not only mobile networks but also some vastly different network deployment, installation and maintenance activities that the telecommunications sector carries out on a daily basis.

nbn is largely supportive of many of the proposals that the Department of Infrastructure, Transport, Regional Development and Communications (the **Department**) has suggested for reform in this Consultation Paper. However, there are a number of proposals that raise significant concerns and potential detrimental impact to **nbn**'s operations. Our concerns include:

- the proposal to develop standard notifications for use across the telecommunications industry;
- the proposal to extend notification timeframes to 20 Business Days;
- a proposed requirement to require engineering certificates without sufficient qualification of the type of certificate or scenario in which it would be reasonable for carriers to provide the certificate; and
- the requirement to remove redundant equipment without further extensive industry engagement to ensure unintended consequences are not realised.

nbn also wishes to take this opportunity to suggest some additional items for future reform. We believe these suggestions will be timely, will create further improvements to the powers and immunities framework and will provide greater protections for the general public and to our networks.

1. Safety and notification

During the rollout of the **nbn** network across Australia we have always prioritised safety and now, as the initial network build is nearing completion, safety remains of the utmost importance to **nbn**. A key component of this focus on safety is ensuring the safe installation of facilities.

Creation of a primary safety condition

nbn takes safety very seriously and has a key focus on complying with its legal obligations. However, we do not think it is necessary to introduce additional safety obligations into the Telecommunications Code of Practice (**Code**) itself beyond the outcomes and principles outlined by the *Telecommunications Act 1997 (Cth)* (**Telco Act**). In particular under Schedule 1, Part 6, clauses 42 and 43, which require the regular inspection of facilities and requirements to investigate dangerous facilities; and under Schedule 3, Part 1, Division 5, clause 10, which



requires carriers to protect the safety of persons and property. Given the range of differing types of low-impact facilities and the varying nature of properties and public utility assets carriers may seek to access, determining the appropriate degree of safety prescription must be finely balanced. If the Department considers that the existing safety regimes are inadequate, **nbn** requests that gaps in specific areas be identified, so that industry members can consider whether those specific areas could be addressed.

Additionally, the industry is already obligated to comply with a wide range of health and safety obligations which are regulated separately but apply regardless of whether carrier powers and immunities definitions and processes are enacted. For instance, carriers with facilities that are subject to EME based complaints are already required to comply with ARPANSA Standards (RPS3).

Standard notifications across industry

nbn does not support the proposal to use standard notifications across industry.

nbn has required access to both public and private property on an unprecedented national scale for the design, construction and operation of the **nbn** network. Reliance on the use of “Land Access Activity Notices” (**LAAN**) and other notices issued under Schedule 3 of the Telco Act (**Schedule 3 Notices**) will continue to be important to ensure the successful rollout of the remainder of the initial build, **nbn**’s role as the default Statutory Infrastructure Provider across Australia and **nbn**’s network investment program recently announced under the 2021/22 Corporate Plan.¹

nbn has created various templates to be used in a variety of circumstances. These templates are written in a manner to suit the needs of the intended recipients and as such different templates are used to address the needs of the different landowners. **nbn** currently provides templates to its delivery partners to ensure that a consistent approach is used for Schedule 3 Notices. These templates provide clear and comprehensive information to relevant landowners and occupiers regarding proposed activities. Different templates are used for:

1. Land owned by public land authorities such as councils, road/rail authorities and waterways where access is generally required for the inspection, installation and maintenance activities for the **nbn** network within publicly owned spaces e.g. road and rail reserves, local government areas.

These authorities typically receive multiple Schedule 3 Notices and are more comfortable and familiar with the content provided, including the supporting legislation referred to. These templates are specifically designed to cater for this level of knowledge.

2. Private property or land owned / managed by body corporates, Multi Dwelling Unit (**MDU**) authorised representatives or businesses where access is generally required for the inspection, installation and maintenance activities for the network on privately owned land and end user premises.

Private landowners and occupiers may only ever receive one notice from **nbn** and are unlikely to have the same level of understanding of the regulatory obligations that drive the content under the Code and Schedule 3. **nbn** has developed bespoke notices to cater for private landowners that are written in a

¹ **NBN** Co, *Corporate Plan 2021*, p40.



consumer-friendly fashion with clear messaging aimed to address any concerns (both legislative and operational queries). These Schedule 3 Notices include information to address key private landowner and occupants' common questions, for example, medical alarms, lifts & fire panels, connection next steps (some of which are bespoke requirements of **nbn**). These notices also reference the specific technology type that will be deployed at the landowner/occupier premises.

nbn believes that the notices provided to landowners based on the templates we have created are generally well received.

[Commercial-in-confidence]

nbn provides a range of supporting material (such as Operations Manuals for Delivery Partners) which outline **nbn**'s expectations, requirements and guidelines for issuing Schedule 3 Notices on **nbn**'s behalf. These Manuals specify that the notification activity window must be adequate enough to allow for a large-scale construction program in an extensive geographic area and also sufficiently specific enough to provide adequate certainty to the recipient as to when the proposed land access activities at their premises will be carried out.

[Commercial-in-confidence]

All of **nbn**'s templates for Schedule 3 Notices already provide the following information:

- The start and finish dates for the works described in the notice. We would not support mandated timeframes if they would be onerous or unworkable to facilitate our deployment rollout at scale.
- The types of works that could be undertaken. We would not support the inclusion of information relating to construction standards. An alternative could be to place a statement within our notices that provides a generic statement about compliance with relevant construction standards without specifying the detail of each particular construction standard that may be applied to each specific site.
- Information on how an owner/occupier can object to our notices.

We are particularly concerned that any move to requiring a standardised template issued to private landowners would:

- detract from the targeted messaging currently provided to private landowners;
- provide little benefit to end users; and
- potentially result in an increase in both enquiries and objection to activities.

Should the Department determine that a standardised Schedule 3 Notice template is necessary, **nbn** strongly recommends this development is directed at notices provided to public landowners only as these stakeholders are more likely to receive multiple notices from different carriers.

Withdrawal of notifications

nbn already provides withdrawal notices as necessary and supports the general proposal that all carriers use withdrawal notices where relevant.

nbn also already provides templates to each of our Delivery Partners for withdrawing Schedule 3 Notices to public landowners. The Operations Manuals issued to our Delivery Partners provide guidance in relation to legislative,



contractual and **nbn** policy requirements for land access, stakeholder engagement and power activities undertaken on public and private land.

In completing the initial network build, the need for **nbn** to issue Schedule 3 Notice withdrawals have generally been rare. As we move to the next phase of the network build, it is anticipated the volume of Schedule 3 Notices issued for **nbn** works would also decrease, therefore further reducing the potential for Schedule 3 Notice withdrawals.

For similar reasons described above for Schedule 3 Notices, **nbn** does not believe a template that is standardised across the telecommunications industry is necessary.

Requirement to provide engineering certification

nbn does not support a requirement to provide engineering certification across all scenarios. Proactive provision of engineering certification in all instances would introduce significant costs, time, complexity and resource constraints to validate the engineering certifications. It would be a challenge to accommodate the potential for all the various types of engineering certificates.

If the Department is still minded to require engineering certifications, we recommend that this requirement:

- is only for particular activities;
- only applies to installation powers and not maintenance or inspection activities; and
- in all instances would only be on request rather than proactively required in all instances. For instance, if there is a legitimate concern under the *Low-impact Facilities Determination 2018* (Cth) (**LIFD**) we could provide a structural certification, but this should not need to extend to under boring works or civil engineering certification.

We anticipate the telecommunications industry would need to work closely together to ensure that any requests for engineering certifications are relevant, necessary and proportionate to the request.

Extending notification timeframes

nbn has demonstrated a strong commitment to engagement with landowners, particularly public utilities including the manner and timing in which **nbn** carries out Schedule 3 activities. This is evidenced through the significant number of Councils and road authorities who have entered into alternative notification agreements with **nbn** for particular types of activities.

nbn does not support the proposal of extending the notification time for public utilities and road authorities from 10 business days to 20 business days for the following reasons:

- It would add significant time and cost to deployment impacting **nbn**'s ongoing ability to program large scale deployment activities such as the recently announced upgrades.
- The proposal would have a significant negative impact on connection timeframes and consequently customer experience generally, including in respect of our recently announced Business Fibre initiative. **nbn** has completed its initial rollout of the **nbn** network and we are no longer submitting large designs on a regular basis. Our works are now primarily demand driven, therefore a move to 20 Business Days would have significant, tangible impacts on our ability to deliver the requested works in a timely manner.
- In **nbn**'s experience, extending the timeframe would only potentially benefit a very minor number of applications (e.g. a Road Authority). However, it would have a significant impact on end-users and customers.



This impact would be caused by **nbn** potentially not being able to meet its nominated SLAs for end user connections. Given there is already an existing mechanism for Public Utilities and Road Authorities to object to any proposed works **nbn** does not consider that it is necessary to introduce an extension in the timeframe (especially given the end user aspects).

- The Consultation Paper has advised that public utilities landowners consider that extending the notification time would provide for additional and more sufficient timeframes for information to be considered in detail without the need to use the objection provision. However, landowners can already use the objection process as a means of addressing their concerns without undue impact to all other Schedule 3 Notices and associated activity. A recipient of a Schedule 3 Notice only needs to make an objection to stop the clock on Schedule 3 activities, at which point any further information or enquiries from the recipient can be resolved.
- **[Commercial-in-confidence]**

If this proposal is implemented, **nbn** would prefer that the Consultation Paper's option 3 be adopted which requires informal engagement with landowners prior to formal notice. During the build **nbn** or its Delivery Partners have often engaged a road authority before issuing a LAAN if we are aware of their upcoming work and have often undertaken regular engagement activities with these types of stakeholders.

2. Objections and protections

Clarifying the objections process for landowners

nbn supports this proposal and considers that it could be a relatively low-cost manner of resolving some landowner complaints. **nbn** suggests that industry develops potential options for implementing this proposal through industry forums.

Allowing carriers to refer objections to the TIO

nbn supports the proposal to enable carriers to refer landowner and occupier objections to the TIO when all avenues have been exhausted to avoid further delay.

Instances where **nbn** would refer matters to the TIO would be rare. Within **nbn**, referral to the TIO is seen as a final step, when all stakeholder engagement, design and construction options have been exhausted. The ability to deliver the network to prioritised locations can be severely delayed when resolution cannot be achieved and in these circumstances we believe referral to the TIO would be warranted.

Removal of redundant equipment

nbn understands the original intent of this reform proposal was to address concerns raised by some public utility property owners that they have had difficulties in engaging with some carriers to remove or relocate redundant equipment, particularly mobile facilities, from their assets. **nbn** would be very concerned if this original intent was broadened to include fixed line facilities and cabling as this would significantly change the scope of impact for carriers.

nbn does not support this proposal and believes it needs extensive industry consultation to ensure that normal competitive behaviours and general industry practices can still be followed. Care should be taken to ensure any obligations to mandate removal is supported only in instances where it is practical and economically feasible. For instance, clarification would be needed on the following:



- What type of equipment is being referred to? Presumably it would not extend to tower foundations or equipment that may be used for future purposes?
- How to exclude equipment on facilities that is being left to prevent access by competitors;
- How to handle equipment that no longer has an owner; and
- How to handle redundant equipment on end user's property when, for instance, an end user moves from Satellite/Fixed Wireless to a fixed line technology.

We anticipate extensive further discussion would be required if this amendment proceeded in order to ensure there are no unintended consequences.

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

Allow antenna protrusions to be extended to a height of 5 meters

nbn has no objection to this proposal.

Allow satellite dishes of 2.4 meters in diameter to be deployed in industrial and rural areas

nbn's fixed wireless network relies on radio transmission to link individual sites to one another and ultimately back into the fibre network. The current low impact parameters of 1.8 metre dishes do not always support the signal strength required for high quality data transmission. Larger radiocommunications and satellite dishes can support stronger signals and increase reliability, improving services to a wider range of areas of Australia.

Because the increase to 2.4 metres would only apply in rural and industrial areas, **nbn** considers this inclusion would have minimal visual impact on the community.

While we are supportive of increasing the parameters to 2.4 metres, we do not consider that planning approvals for satellite dishes that are up to 2.4 metres in diameter should be required as this will cause delays in service provision to customers. Currently 2.4 metre transmission dishes trigger the need to apply for a planning approval, which can add an average 5 months to deployment timeframes of impacted sites. This has a significant impact on providing urgent capacity upgrades of existing sites. This delay can affect multiple sites in surrounding communities due to the interdependent nature of the network design. This significant delay is not considered appropriate considering the minimal increase in visual amenity impacts arising from the use of 2.4 metre dishes, which are difficult to differentiate from 1.8 metre dishes that are currently low- impact.

As such, **nbn** continues to support allowing satellite dishes of 2.4 meters in diameter to be deployed in industrial and rural areas but not any requirement for planning approvals for these satellite dishes. The extension to 2.4 meters is a priority for **nbn** to facilitate rapid upgrade of transmission backhaul equipment on fixed wireless sites.

Lens antennae as a new low-impact facility

nbn continues to strongly support this proposal. Lens antennas offer the advantage of being able to replace multiple individual panel antennas at a single elevation. This will provide the opportunity for existing structures to accommodate more carriers at lower overall elevation in some instances. The ability to install lens antennas in all areas will promote co-location and minimise the need to install additional towers in cases where existing structures may be at full structural capacity.



From an operational point of view, **nbn** currently has 131 sites where lens antennas are deployed and is likely to continue using this technology on an ongoing basis. Defining lens antenna as low impact facilities will assist carriers alleviate the significant cost and time delays associated with the existing planning approval requirements. These include:

- the time delays associated with planning approval application preparation, obtaining landowner consent to lodge, and Council assessment periods which can range from 1 month to 9 months;
- time delays associated with the need to obtain subsequent build permits and inspections prior to build (this can be up to an additional 2- 6 weeks); and
- costs for planning and building approval application preparation, application fees and build permit inspection fees which can range from \$3,000 to \$8000 in additional cost per site.

Improve coverage outcomes through tower extensions

nbn continues to support this proposal as it will enable flexibility for carrier and infrastructure deployment to occur around non-sensitive and non-residential land uses and zoning.

Allowing deployment on poles rather than on utilities

We refer to our views below on 'New amendment to Telco Act and LIFD, Part 5, Additional poles to be LIFs'.

Encourage the co-location of facilities

nbn does not currently anticipate any significant impact to **nbn** if this proposal is to be implemented based on the current technology available for the fixed wireless network.

4. Other areas recommended for consideration

New cabinet enclosure – new item to be added to LIFD, Part 3

nbn requests the Department also consider the adoption of another of the original proposals to amend Schedule 1, Part 3 of the LIFD. That is, to include differently sized equipment cabinets to be sited near, and used in conjunction with, a designated radiocommunications facility with the dimensions of up to 3 metres high with a base area of not more than 2 square metres. As per the original proposal set out in the Department of Communications' 2017 consultation paper, it should still be colour-matched to its background and be a neutral colour (for example, off-white, beige or light grey), or in a colour agreed in writing between the carrier and the relevant local authority.

Generally, cabinets with a maximum height of 3 metres, and base area of 2 square meters, are more compact than the alternative equipment shelters which are currently permitted under item 4 of Part 3 of the Schedule. This means that where the new cabinet types are used the overall visual impact of facilities will be lessened.

nbn considers this is will be a positive amendment that will assist in minimising any visual amenity impact of telecommunications facilities.

New amendment to Telco Act and LIFD, Part 5, Additional poles to be LIFs

nbn supports consideration of other types of poles to also be specified on public and private land as low impact facilities.



Defining poles (for use of telecommunications or electricity distribution) as low impact will greatly assist with the maintenance and infill of the fixed line networks where required. Poles are used by **nbn** to support fibre and copper cables for transit, distribution and service connections, and to support power cables to connect network facilities such as fixed wireless towers to the electricity network. The timely use of aerial poles would facilitate **nbn**'s continuing network rollout and installing individual subscriber connections.

Increasing the volume constraint for maintenance of facilities

nbn suggests that amendments to the Telco Act are needed to ensure that carriers can continue to rely on their maintenance powers under Schedule 3, clause 7, even in the event that the replacement facility is slightly larger than the original facility.

Under Schedule 3 of the Telco Act, carriers have powers to do anything necessary or desirable, at any time, for the purpose of maintaining facilities. These maintenance powers include the ability for carriers to replace the whole or part of the original facility in its original location (see clause 7(3)(d)), provided that:

- in the case where the original facility is a tower, the volume of the replacement facility does not exceed the volume of the original facility (see clause 7(5)(b)(ii)); and
- in the case where the facility is not a tower, the volume of the replacement facility does not exceed the volume of the original facility (see clause 7(5)(c)(i)).

Although Schedule 3 further provides that "trivial variations are to be disregarded", the practical application of this volume constraint is that **nbn** is often prevented from relying on its maintenance powers under Schedule 3 Clause 7, because the replacement facility is slightly larger than the original facility. As **nbn** moves into the operation and maintenance phase and with rapidly developing technology types, this constraint is likely to become an increasing burden on **nbn**'s ability to safely and efficiently maintain its infrastructure, e.g. the replacement of pits containing asbestos.

nbn's challenge in this regard is increased by the fact that **nbn** is restricted to commercially available equipment that is available off the shelf internationally. **nbn** therefore has limited ability to specify the size of equipment in order to strictly comply with the existing Australian sizing requirements.

nbn recommends Schedule 3, clause 7(5)(b)(ii) and (c)(i) be amended to provide:

*the volume of the replacement facility does not exceed the volume of the original facility **by more than 20%**;*

nbn would also be supportive of a volume increase of as little as 10%, as this would still support carriers to conduct essential maintenance under Schedule 3 in situations where the replacement facilities are of a slightly different design to the original facility. **nbn** considers increasing the volume constraint in the range of 10-20% is not likely to have a significant impact on the visual impact or amenity of facilities.

Vegetation clearing for asset protection to be considered as LIF category

In order to maintain the bushfire resilience of **nbn**'s fixed wireless towers and other telecommunications facilities in rural and remote areas, **nbn** suggests it will be beneficial to expand the definition of maintenance activities permissible to include 'bushfire resilience' under Chapter 6 of the Code and, if needed, amendments to Schedule 3, Division 4, section 7(3)(f) of the Telco Act. Practically, to reduce risk of facilities and associated services being



impacted, preventative clearing of vegetation is required within a 10m perimeter of the Facility and 4m either side of any overhead power supply or telecommunications cabling:

- on land that is identified in a planning instrument as bushfire prone land to be included as a maintenance activity; and
- on any land where there is a need to mitigate the immediate risk of damage to a facility from a bushfire event as a maintenance activity.

Increasing the square meterage of solar panels under the LIFD

nbn considers that amendments to the LIFD are needed to ensure that carriers can continue to rely on their powers under Schedule 3 to install solar panels that will power telecommunications facilities.

Currently, carriers can rely on Schedule 3 powers to install a solar panel with a base area of no more than 12.5 square metres as a low impact facility (under Part 4, Item 3 of the LIFD), provided that the solar panels are installed in a rural area that is not an area of environmental significance. There is no scope to install solar panels of any size in residential, commercial or industrial areas as low-impact facilities.

Developments in technology mean that telecommunications facilities, such as fixed wireless towers, can be powered by mobile generators run primarily by solar power. These solar powered generators mean that telecommunications facilities can operate independently of the electricity grid for long periods of time, with solar panel size being a direct factor to the length of time facilities can operate off solar power alone. The generators and solar panels are intended to be installed within the existing equipment compounds that form part of the facility, and therefore we don't anticipate there to be any additional significant visual impact.

Solar powered generators have potential to support the uninterrupted operation of the telecommunications network, notwithstanding external factors such as power outages caused by bushfires. The 2019/2020 bushfires demonstrated that bushfires can disrupt the electricity supply to telecommunications infrastructure and therefore interrupt the operation of the telecommunications network at a crucial time. We note this amendment could support similar views on solar powered backup power expressed in the recently released Royal Commission into National Natural Disaster Arrangements Report.²

Solar powered generators can be mobile and can be relocated between sites in emergency situations. There are also clear environmental benefits in encouraging more widespread use of solar powered generators in telecommunications networks.

However, the current LIFD size and location restrictions mean that **nbn** is unable to realise the full potential solar powered cells have to offer. Smaller solar panels ultimately limit the effectiveness of the generators and their ability to rely predominantly on solar power. Consequently, under the current regime, telecommunications facilities must be predominantly reliant on the electricity grid augmented by diesel powered generators (where temporary power is required) and are unable to take up the full benefits that solar powered generators offer. **nbn** considers solar powered generators could be appropriately installed in industrial areas without creating additional impact.

² Royal Commission into National Natural Disaster Arrangements, *Report*, 28 October 2020, p240.



Consequently, **nbn** is proposing that the LIFD, Schedule – Part 3 – Item 7 be amended as follows as a timely and necessary improvement:

Colum 1 Item No.	Column 2 Facility	Column 3 Areas
7	Solar panel with a base area of not more than 25 square metres	Rural Industrial