

30 October 2020

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

Cc: The Hon Paul Fletcher MP, Minister for Communications

By email: powersandimmunities@communications.gov.au

Dear Ms Blackwood

Improving the telecommunications powers and immunities framework

The Property Council of Australia welcomes the opportunity to comment on *Improving the telecommunications powers and immunities framework* and I thank the Department for providing an extension past the initial submission deadline.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private. Our members span commercial, retail, industrial, residential and education sectors of the industry.

The Government's objective of "Australians having ready access to high-quality, reliable and affordable telecommunications services", is shared enthusiastically by the property industry. Our members create spaces where people work, play and live and in today's modern world, telecommunication plays a growing role in those activities.

The property industry has a wealth of experience, expertise, and investment in delivering various services to customers in our buildings and are custodians of the health and safety of all building users. As telecommunications infrastructure becomes more and more integrated with the built environment, the evolution of the Telecommunications Act (the Act) and associated codes would benefit greatly from increased engagement and collaboration with the property industry.

The Property Council was pleased to participate in the Powers and Immunities Reference Group (PIRG) following a similar consultation in 2017 and, while we welcomed the constructive dialogue of that group and ideas carried forward into this consultation paper, little has changed for the better in our members' day to day experience of dealing with telecommunications carriers.

Our members remain of the unanimous view that the imperious and sometimes aggressive behaviour of carriers in their dealings with building owners sees owners bearing unreasonable health and safety risks and costs on their premises and puts building users at greater risk.

More substantial changes to the framework are required to check the worst behaviour of carriers and a stronger commitment to collaboration with land and building owners must be embedded in the governance of this framework into the future.

We have provided more detailed comments on the consultation papers' proposals in the attached submission, to which we also attach our previous submission and associated case studies provided in 2017, as we believe the points raised therein are still valid.

In addition to this detailed feedback, we make the following high-level recommendations:

- 1. Embed a structured process for landowners, carriers and regulators to jointly review any future changes to the Powers and Immunities Framework** – this should be achieved by establishing a formalised, long-term role for the Powers and Immunities Reference Group (PIRG) to review any proposed changes to the framework prior to legislative amendments being consulted on. This should be done in a structured process that encourages collaboration with a requirement for the PIRG to make recommendations that reflect the views of all key stakeholders. The property industry would welcome the chance to work more collaboratively with carriers, but to arrive at that state from the current adversarial approach requires structure and the ability to balance views of the different stakeholders so that the governance of this framework is not inherently one-sided.
- 2. Expand the focus of reform to in-building coverage** – building owners are concerned the new 5G spectrum has less ability to penetrate buildings and uses predominantly licenced spectrum in the hands of three dominant Australian carriers. These issues raise concerns around community expectations and commercial competition and related flow on effects to the industry for in-building coverage (IBC) and consumers. This consultation paper is silent on IBC which involves the installation of a Distributed Antenna System (DAS) and follows a different process and commercial model than macro telecommunications infrastructure. Considering the average person spends 87% of their time indoors¹ and the vast majority of mobile communication occurs with one or both parties being within a building², this is a significant omission and should be included in the Department's scope of work moving forward
- 3. Reform the process regarding compensation for carriers' use of landowners' infrastructure** – fair and equitable financial compensation for the use of landowners' space and infrastructure to house carrier facilities is another omission from this review. The Property Council recommends the next tranche of reform work focuses on the design and inclusion of mechanism within the Act for compulsory compensation to landowners for use of their infrastructure. This review should include participation of the Australian Competition and Consumer Commission (ACCC) and focus on a transparent and equitable process to ensure all parties receive fair compensation.

We would welcome the chance to discuss our recommendations with you further and please do not hesitate to contact [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Yours sincerely,

[REDACTED]
[REDACTED]
[REDACTED]

¹ NHAPS 2001 (US), <https://www.nature.com/articles/7500165> and <https://indoor.lbl.gov/sites/all/files/lbnl-47713.pdf>

² Cisco and Commscope claim 80% of mobile use originates or terminates indoors: <https://www.cisco.com/c/dam/en/us/solutions/collateral/service-provider/small-cell-solutions/smallcells-infographic.pdf> and <https://www.commscope.com/NewsCenter/PressReleases/Indoor-Wireless-in-Mobile-Society-Research-Reveals-Gap-Between-Expectations-Of-Wireless-Consumers-and-Those-Who-Design-and-Manage-Buildings/>

Property Council response to consultation paper proposals

1. Safety and notification

A. Creation of a primary safety condition

Property Council supports the creation of a primary safety condition but this in and of itself does not go far enough to ensure that carriers' contractors and subcontractors deployed to building sites will conduct their work safely or follow existing Work Health and Safety (WHS) requirements. Indeed, our members' experience of carriers' subcontractors at their buildings demonstrates a disregard for adequate safety practices and an inconsistent approach to site induction and safety procedures.

We therefore recommend a properly enforced code of access, similar to the *Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*, administered by the Australian Competition and Consumer Commission (ACCC), should be developed governing carrier access to buildings, public utilities and WHS practice. This would provide an operational framework for how carriers access and work on these sites, including requirements for site induction processes, provision of information provided in advance of works, agreed work schedules and requirements for mediation to settle disagreements on commercial arrangements.

B. Standard notifications across industry

The Property Council supports this proposal however strongly believes that the proposed requirements for provision of technical drawings or plans to public utilities must apply to building owners as well.

The standard of documentation provided to building owners is overall incredibly poor and not aligned with expected practice to produce "for construction" drawings in accordance with best engineering practices. These are largely not provided by carriers without building owners taking the time to press the point, which many do not have the time or resource to do. Currently, typical details of installations provided comprise just an email or a group of photos with hand drawn lines on them.

We would like to see a more collaborative process and engagement between carriers and building owners to confirm the physical location, riser space within a building, alternate antenna locations and aesthetic considerations before a final design is locked in a drawings are produced. A recognition that a commercial building owner is a sophisticated stakeholder, representing not only themselves but investors, tenants and the public should necessitate similar provision of information to building owners and public utilities.

C. Withdrawal of notifications

Of the issues associated with Land Access Notices (LAANs), withdrawal or cancellations of activities in isolation is not the primary concern, but contributes to the overall resourcing pressure put on building owners to constantly plan and readjust their time and effort to conduct site access tasks and security management (at their own cost) when they mostly derive no income for the use of their property or services. Owners are regularly required to educate and engage with new trades people every time a site visit is performed with no continuity or maintenance of site records.

We would welcome an industry commitment (Option 1) to withdraw notices for cancelled or delayed works in a reasonable timeframe but question why this is not already happening more frequently if there is a willingness to do so. We suggest Option 1 is trialled in the first instance and revisited in the next tranche of reform work based on carriers' demonstrated behaviour in the interim.

D. Requirement for engineering certification

The Property Council supports a codified requirement for the provision of As-Built documentation to building owners, in accordance with best practice construction documentation, that provides clear documentation of the equipment installed on a site.

Further, this must extend to an ongoing requirement to maintain quality site records. This would provide an enormous productivity benefit over time by ensuring efficient access to site facilities and ability to minimise site visits.

Currently, cost cutting measures by carriers results in their agents and contractors taking shortcuts both in access and installations processes, leaving firestopping measures unfulfilled and performing little if any make good of decommissioned cabling. As individual carriers can install their facilities, mobile, network and customer access technology without any mandated requirement to make the site good when no longer required, MDF rooms and risers are now overcrowded due to the constant use of LAANs to almost exclusively install, not remove any equipment.

Enforcing requirements for provision of a standard set of information (including As-Built drawings and design documentation and maintenance of quality site records) would make an enormous difference and streamline the time and cost spent by both building owners and carriers in the design, maintenance and decommissioning of carrier equipment within buildings. As suggested in our response in section A, these requirements should be included in a regulated code of access with further consideration given to the format in which this information should be provided.

E. Extension of notification timeframes

The Property Council supports the Telecommunications Industry Ombudsman (TIO) recommendation to provide extended, uniform timeframes across all activities – including commercial and residential buildings – not just for utilities and road authorities.

In some cases, commercial building owners need to engage investors or tenants to get approval for carriers to access their tenancy which takes time to secure, in addition to the other matters requiring a building owners' attention prior to works commencing. We note a timing extension would be less necessary if the appropriate information and drawings were provided upfront and the process of design changes was more collaborative, a behaviour and culture change that the property industry would welcome and encourage.

We believe at this stage, based on the track record of carrier behaviour towards building owners and the adversarial use of the LAAN process by carriers, a legislative amendment to Schedule 3 of the Act to extend minimum notification timeframe for **all landowners** (not just utilities and road authorities) from 10 business days to 20 business days would provide the necessary additional assurance to building owners that they can meet the objection timeframes.

2. Objections and protections

A. Clarifying objections and processes for landowners

The property industry would prefer to see a more collaborative approach to dealing with carriers in advance of LAANs which would see objections used as a last resort, rather than TIO referrals or court action.

We have found in consulting with building owners in the past few years that beyond the larger, better resourced commercial building owners, there is generally a very poor understanding on owners' rights and avenues for objections to proposed works by carriers.

We uncovered many instances of commercial building owners or apartment strata bodies having been misled or confused as to the contents of the Act and how it is to be administered. In many cases, owners will give up further pursuit of misunderstandings as it is too difficult and time consuming to deal with. Building owners may choose to focus on their own assets and the myriad

other responsibilities to contend with and engage specialist consultants without fully appreciating the complexity of the issues involved.

The Property Council would welcome the provision of plain English guidance and factsheets targeted at different audiences, combined with a requirement for carriers to link to these resources in a LAAN.

B. Allowing carriers to refer objections to the TIO

The Property Council supports this proposal to amend the Code of Practice and allow carriers to refer objections directly to the TIO and agree that a timeline or deadline for objections to be lodged should also be explored.

As part of our participation on the PIRG, we agree this may make the dispute resolution process more efficient and provides an incentive for carriers to resolve disputes through the existing process rather than court action.

The property industry reiterates our preference for a more collaborative approach to dealing with carriers in advance of LAANs which would see objections used as a last resort, rather than TIO referrals or court action.

In supporting this proposal, we also raise the need to ensure impartiality within the TIO and suggest a review of its governance is conducted in parallel to ensure equal and fair understanding of the issues from both carrier and landowner perspectives.

C. Removal of redundant equipment

The Property Council confirms that the problem of redundant equipment is an extremely significant issue within buildings that **requires legislative action** to address which includes the ability to enforce and compel a carrier to remove redundant equipment on any site, not just utilities.

At this stage we would prefer Option 2 as this would apply more broadly and capture commercial buildings, however further work is required to determine the details of when and how this requirement would be implemented. For example, we would suggest a requirement for the removal of redundant equipment should be completed within a specified timeframe and after that deadline passes, the landowner is able to proceed and have the equipment removed at the carrier's cost. We suggest the details of Option 2 are worked through in consultation with the PIRG and implemented as a matter of priority within the current suite of reforms.

In our previous submission to the Department in 2017 we provided numerous case studies including images of clogged risers and congested MDF rooms within buildings that demonstrate this issue is prevalent across commercial buildings and in 2020 remains an untenable position for owners to continue to bear the significant cost of removal and remediation.

We will be pleased to provide further examples of this ongoing behaviour to the Department, separate to this submission, and emphasise that building owners increasing provision of space for this infrastructure over time reduces the Net Lettable Area and therefore has serious impacts on their business. This is compounded by:

- the life cycle of a building commonly spans 50 years, meaning multiple generations of tech equipment are cycled through and as the time frame between generations shortens, more and more redundant equipment must be dealt with
- there is no incentive for carriers to make efficient use of space to begin with as they do not bear the cost of this space at market value, e.g. common practice of wall mounted equipment in MDF rooms as opposed to rack mount which take up far less space
- an active avoidance by carriers to use shared infrastructure within buildings resulting in needless duplication and extra space usage, especially with respect to cabling.

3. Services in line with community expectations

This consultation paper is largely focused on addressing issues related macro mobile coverage where the infrastructure may reside within a building, but the purpose is external coverage. One of the most significant areas of concern to building owners is in-building coverage (IBC) which involves the installation of a Distributed Antenna System (DAS) and follows a different process and commercial model than macro telecommunications infrastructure. Considering most mobile communication involves one or both parties being within a building, this is a significant omission and should be included in the Department's scope of work moving forward.

With respect to IBC, building owners are concerned the new 5G spectrum has less ability to penetrate buildings, and uses predominantly licenced spectrum in the hands of three dominant Australian carriers. These issues raise concerns around community expectations and commercial competition and related flow on effects to the industry and consumer.

IBC generally involves installation of a Distributed Antenna System (DAS) which follows a different process and commercial model than macro telecommunications infrastructure. We propose the Department dedicate a workstream to examining these issues in the next stage of reform, including the following issues:

- **The commercial model is skewed to favour carriers** - the initiation, construction, and funding the full cost of DAS infrastructure resides completely with the building owner despite them deriving no direct revenue, all income goes to carriers
- **Governance forums have no building owner or contractor representation** - the mobile carrier forum (MCF) defines IBC and DAS technical and deployments requirements yet has no permanent representation from industry contractors who build or building owners who fund the infrastructure. 5G requirements are being defined by the MCF as we speak. Depending what 5G requirements they decide, IBC/DAS costs may double
- **There is no co-location of facilities amongst carriers themselves** – there is no requirement or incentive for carriers to piggyback off common 'backbone' infrastructure and compete on service offerings. This would save costs and increase the efficient use of space within buildings,
- **There is complete opacity and no consistency in pricing for installation of DAS infrastructure between carriers which creates anticompetition concerns** – our members experience large variations in cost through open tender processes with little evidence or rationale for such differences. In some cases, the carrier who wins a tender will then immediately subcontract the work to another carrier who also provided a bid. For further details, please see our case studies in Appendix A.

A. Improving coverage through better facilities, where safe, AND

B. Improving coverage through tower extensions

While we make no specific comment about the application of the proposed changes in regional or industrial areas, the Property Council is very concerned and strongly objects to the proposed changes to the Low Impact Facilities Determination (LIFD) in commercial areas which would see a significant extension of tower protrusions within central business districts. In this setting, the impact of a 2m height extension creates a significant visual impact and we would disagree with the premise of what constitutes a 'low impact' facility in densely populated areas like CBDs.

The statement made in the consultation paper that *"While there may be some impact to visual amenity from higher structures, the improved coverage and co-location of infrastructure that could result from height extensions means less telecommunications infrastructure—towers and antennae—need to be deployed overall"*, is misleading. This statement seems to ignore the implications of the rollout of 5G which will require many more antenna installations due to the lower range and penetration of the higher 5G spectrum.

In short, the property industry is bracing for an explosion in the amount of infrastructure slated for installation in the coming years which makes proper consideration of how this can be integrated into the fabric of our cities using smart and thoughtful design all the more important. It is disappointing that measures including proper concealment, camouflage and shrouding infrastructure at a minimum are not contemplated here.

C. Allow small cell deployments on poles rather than on utilities

While the Property Council supports the use of pole infrastructure in certain situations, we are concerned that generally speaking, carriers do not have the design expertise nor incentive to deliver good visual outcomes. Carriers, partly by necessity, lean towards lowest cost. While local government, planning, and commercial property landlords have much stronger in-house expertise and consideration for aesthetics and public interest.

Without changes to the low-impact facilities process so to make 'landowners' part of the design and approval process, we cannot support the re-classification of poles as 'low impact'. At this stage, we do not believe wrapping conditions around the re-classification would sufficiently address our concerns.

D. Encourage co-location of facilities

The Property Council supports the intent of limiting negative impacts of increased small cell deployment and encouraging more efficient use of existing infrastructure, especially with the prospect of 5G rolling out. While previously expressed concerns raised around impacts to structural integrity and visual amenity have been acknowledged, there are no proposed measures to mitigate these impacts.

It is not appropriate to seek support for lifting co-location volumes without having first articulated a methodology for measuring co-location volume and worked with all stakeholders on proposals for measures that mitigate the adverse impacts of increased co-location volumes. On these grounds, the Property Council objects to either Option 1 or 2 proceeding at this stage.

Following our comments regarding IBC being out of scope, we would also like to raise here the need to see more co-location among carriers themselves. A good example is the efficient use of fibre cabling infrastructure within buildings. It would be a vastly better outcome from a cost and efficiency perspective to allow the building owner to install a single large fibre backbone that can be shared by all carriers as opposed to each hauling fibre through a building. At present there are elements of the Act which prevent this but there is no overarching reason why this cannot be done (with the right standards and process in place) saving time and cost for all stakeholders.