



Telecommunications
Industry
Ombudsman

TIO submission to the
Department: Improving the
telecommunications powers and
immunities framework
October 2020

Introduction from Ombudsman, Judi Jones

Thank you for inviting me to comment on proposed changes to the telecommunications powers and immunities framework. I welcome the Department's continuing work to ensure there is balance between deployment and the needs of landowners and occupiers (referred to collectively as **landowners** in this submission).

My office plays a unique role within the powers and immunities framework. Under the *Telecommunications Act 1997*, a landowner may object to the carrier's proposed inspection, maintenance, or placement of a 'low-impact facility'. The legislation requires carriers to refer unresolved land access objections to my office when requested by the landowner, and carriers must comply with any resulting directions.

During Financial Year 2020, my office handled 19 land access objections,¹ up from 14 during the previous financial year. Additional landowners and carriers contacted my office about land access and activity notices (**Notices**), but we did not have jurisdiction to handle the contact for various reasons. A common reason for not being able to handle an objection is because the time to object has passed.

Our experience in handling objections provides us insights into issues faced by landowners and carriers during the land access process, as well as ways these processes can be improved. This submission offers our views on two of the proposals set out in the consultation paper:

- 1 Proposals on safety and notification
- 2 Proposals on objections and protections

1 Proposals on safety and notification

We welcome each of the Department's proposals around safety and notification and consider they outline broad improvements that:

- better inform landowners about the land access process
- give landowners adequate time to consider a notice of proposed activity
- provide landowners with clear assurance about the standard of proposed work and the quality of completed work.

1.1 A safety condition may give landowners greater assurance about the standard of the proposed activity

We support the Department's proposal to introduce a primary safety condition.

A primary safety condition would provide landowners with greater clarity around carriers' obligations to carry out work in a way that meets relevant safety obligations and standards. We anticipate this could improve landowner confidence in the quality of the proposed activity.

It is important the intention for this condition is set out clearly so landowners do not mistakenly see it as a new ground for objection. Safety concerns are not one of the grounds on which a landowner can object to land access activity. Despite this, we see landowners raising safety concerns as part of their objection to the activity.

¹ [Telecommunications Industry Ombudsman's Annual Report FY20](#)

1.2 Clear and consistent information will help landowners better understand the land access process

We support the Department's proposal to introduce standard notices to inform landowners about proposed work.

We recommend the Department slightly extend its current proposal so that carriers are required to include a schedule of works in Notices to those landowners that are not public utilities.

We see clear benefit in carriers issuing uniform notices set out in plain English that explain the land access process, the landowner's right to object, and relevant timeframes. We consider a standard approach will lead to a more uniform and fair process, as well as provide a foundation for collaborative engagement between landowners and carriers.

a) Carriers should provide a schedule of works to landowners who are not public utilities

In the consultation paper, the Department proposes carriers provide a 'plain English explanation' of the proposed activity to landowners who are not public utilities.

We recommend carriers are also required to send a schedule of works to these landowners. This is because there is potentially broad scope around what a 'plain English explanation' could entail, and such a requirement might be interpreted differently by each carrier.

The schedule of works should inform landowners what activity the carrier is proposing to undertake, when it proposes to undertake it, and how long it will take. The schedule of works could be in the form of a standard appendix to the Notice.

b) Standard notices will remove imbalances caused by variations in notices

We see wide variation in the way Notices are set out and the level of information provided to landowners.

While Notices usually meet the obligations set out in the Code of Practice, we see the structure and language used in some Notices contributing to a landowner's confusion about the process.

Notice formats we see that may disadvantage landowners include where a carrier has:

- not clearly explained how the proposed activity fits within the land access regime
- not clearly explained the landowner's right to object with relevant timeframes and dates
- not provided timeframes or a schedule of work for the activity
- only provided a postal address to lodge objections.

We consider standard documentation to landowners should include:

- a Notice that sets out:
 - the proposed activity
 - relevant timeframes
 - dates for response (with an email and a postal option)
 - the landowner's right to object to the TIO
- a schedule of works
- a factsheet with relevant information about the land access process (see section 2.1).

Case Study A – Landowner tries to object to a carrier’s proposed activity after the objection period has passed

In August 2019, a carrier sent Leilani* a Notice proposing to install cabling on her land. Leilani was a small landowner who had no prior experience with the land access process.

In November 2019, Leilani contacted the TIO to find out whether she could object to the proposed activity. Leilani said she did not agree with the carrier’s proposal to install cable on her land but had not responded to the Notice because she did not understand it and did not know what her rights were.

While the Notice met the requirements set out in the Code of Practice, it was a long document with key information, such as the objection process and timeframes, not prominently set out. It is likely the format of the Notice contributed to Leilani’s confusion about the land access process.

We could not consider an objection because the carrier had not referred it to our office under the Code.

*Name of individuals, organisations and companies have been changed.

1.3 Carriers should notify landowners about withdrawn notices

We support the Department’s proposal to introduce a requirement for carriers to notify landowners about the withdrawal of a notice. Ideally, a carrier would tell the landowner the carrier has withdrawn the notice before the activity is due to start. Where this is not possible, the carrier should notify the landowner no more than five business days after the activity was due to start.

We consider it to be good practice for carriers to contact landowners and advise them when planned work has been cancelled. Some landowners tell us they have not heard from a carrier around three months after the start date for planned work. These landowners describe impacts such as being unable to complete alternate work on their land or prepare it for sale.

1.4 An engineering certificate could lead to greater confidence in the standard of completed work

We support the Department’s proposal for carriers to provide landowners with an engineering certificate showing the carrier’s work meets relevant standards. We consider the requirement would be more effective if introduced in either an industry code registered with the ACMA or the Code of Practice, rather than a non-regulatory approach.

Some landowners are concerned activity may have adversely impacted their property or land and pay for engineering certification to gain assurance the work has been completed to a reasonable standard. Landowners often tell us they have concerns around:

- the general safety of the installation
- radiation levels
- the integrity of the infrastructure the installation is attached to or built on i.e. a rooftop
- whether an installation will affect the landowner’s building warranty.

To provide landowners with greater peace of mind about the quality of work carried out on their land, we consider the engineering certificate should rely on a reputable existing standard (such as the Building Code of Australia²). The requirement should also clearly set out what the certificate

² <https://hia.com.au/business-information/standards-regulations/building-standards>

covers and what happens if a carrier fails to provide a certificate or the work fails to meet the standard.

1.5 Landowners will benefit from more time to consider and object to a Notice

We support the Department's proposal to increase timeframes for notices of proposed activity and objections.

If introduced alongside the Department's proposal to introduce standard notices, landowners will receive a clear notice and have sufficient time to consider the notice and seek advice. Both steps are much-needed improvements in the land access process.

a) Landowners need reasonable time to understand the process and seek advice

We often see instances where landowners do not understand the process and have had difficulty getting advice about proposed activity due to the timeframes. With the current timeframes, we often see issues arise where landowners:

- do not understand the land access process
- are not aware of the timeframe to object, and
- do not understand the consequences of not meeting specific timeframes.

Smaller residential landowners and strata or building managers may be disadvantaged by the current timeframes. This can be either due to a need to seek advice on the process or, in the case of strata or building managers, the need to engage with multiple related parties before lodging an objection.

At times we receive objections we cannot handle because a landowner has asked a carrier to refer a complaint to us after five days, and the carrier has declined to refer it.

b) Recommended extensions to timeframes

As reflected in the consultation paper, we have previously supported:

- increasing the minimum notification timeframe from 10 business days to 20 business days
- increasing the timeframe to provide a written objection from five to 10 business days.

We consider the proposed timeframes would allow landowners a reasonable time to seek advice about the proposed activity and decide whether they wish to lodge an objection.

Case Study B – Owner's corporation unable to meet within the objection timeframe

In May 2020, a carrier sent Fatima* a Notice proposing works at her property.

Fatima is a member of the owner's corporation for the property. She received the Notice around two weeks after it was dated. While she wanted to discuss the Notice with the other members of the owner's corporation before objecting, the timeframes set out in the Notice did not provide time for group to meet.

Fatima responded to the Notice, asking the carrier questions about the proposed activity. The carrier did not address her queries, but sent a letter from its lawyer saying it would issue legal proceedings if it was not given access to the property.

Fatima asked the carrier to refer her objection to the TIO, but the carrier refused, saying the timeframe to object had passed.

* Name of individuals, organisations and companies have been changed.

2 Proposals on objections and protections

We broadly support the Department's proposals on objections and protection. However, the proposed requirements in these two areas would benefit from further development:

- We support the introduction of a factsheet explaining the objection process, and consider carriers should also provide landowners with information at relevant stages of the land access process, such as outlining the landowner's options in an end of consultation letter
- While we see instances where it is reasonable for carriers to refer objections to our office without a request from the landowner, this should only occur when options for further consultation have been exhausted.

2.1 Landowners will benefit from clear guidance about objections in an 'end of consultation' letter

We agree the Department's suggestion to develop a factsheet could support improved understanding of the objection process. In addition, we suggest introducing a standard 'end of consultation' letter that clearly explains the next steps in the objection process to the landowner.

In the consultation paper, the Department says landowners 'remain concerned' the current process 'does not provide necessary guidance about the objection process.' We often speak with landowners, particularly smaller landowners, who are not clear about the objection process or relevant timeframes.

To be effective, landowners should have information explaining their rights and obligations at each step of the process. Effective communication about the objection process could be presented in standard form documents including:

- a broad explanation of the objection process as part of the Notice (as discussed in Part 1.2) and a link to more detailed information
- a general factsheet outlining the land access process, including the objection process, provided with Notice
- (following consultation between a carrier and landowner) a standard form end of consultation letter that:
 - clearly sets out the landowner's rights and options
 - includes an up-front boxed section asking whether the landowner wants the carrier to refer the objection to our office, and
 - the timeframe by which they must make the request.

2.2 Carriers should only refer objections to our office when genuine consultation is not possible or has failed

Carefully managed, we see value in the Department's proposal to allow carriers to refer objections to our office without a request from the landowner. We see benefit where referral follows genuine consultation (or attempted genuine consultation) between a carrier and landowner, and where an agreed resolution is highly improbable.

We recommend the Code of Practice provide more specific conditions around consultation prior to a carrier referring an objection to our office directly. A carrier should be allowed to refer an objection to our office without landowner request where either:

1. The carrier has attempted consultation with a landowner who refuses to participate

If a landowner refuses to participate in the consultation process, a carrier should be able to refer an objection to us rather than waiting for the consultation period of 20 business days to pass.

Our office should be satisfied the carrier has made reasonable attempts to consult with the landowner and agree there is very low or no chance of effective consultation.

2. Genuine consultation has taken place and the consultation period has expired

It is important carriers are given an opportunity to engage with landowners during the consultation period, with a focus on addressing the landowner's issues and responding to their concerns. Within the current 20 business day consultation period, we see instances where some issues raised by the landowner are resolved, and compromises reached.

The Code of Practice requires carriers to make reasonable efforts to resolve the objection through consultation with the landowner. We consider carriers could demonstrate 'reasonable efforts' by providing the following when referring an objection to us:

- A copy of relevant notes or correspondence that demonstrate at least two genuine attempts to address the landowner's concerns about the proposed activity, including providing fulsome responses to reasonable questions
- Records showing when and how it explained the land access process and the landowner's right to object, including referring the landowner to our website and guidelines where appropriate.

When we assess an objection, consultation between carriers and landowners is useful as the information exchanged provides us with background information about relevant issues. If an objection is referred to us without genuine consultation, we may need to collect more preliminary information as part of our assessment of the objection. There is a risk this would delay the decision on an objection.

Finally, this proposal would operate well in conjunction other proposals outlined in the consultation paper, such as giving landowners clear information about the land access process, their right to object and longer consultation times. With clear information and longer timeframes, we anticipate landowners would be more open and able to consult with a carrier. This would mean fewer instances where carriers need to refer objections to our office directly.

Case Study C – A carrier tries to refer an objection to our office when a landowner would not consult

In June 2020, a carrier sent Guido* a Notice proposing to access and undertake works on his land. Guido did not respond to the Notice.

Several months later the carrier sent Guido a new notice providing details of the same intended works and explaining that the works had been delayed because of the COVID-19 pandemic. When Guido told the carrier he did not agree to the works, the carrier referred Guido to the objection guidelines in the Notice it had sent him.

A series of brief emails followed. Guido maintained the carrier did not have permission to enter his land. The carrier reiterated that Guido had not raised a valid ground for objection but did not explain the objection process to him.

The carrier then tried to refer Guido's objection to the TIO, but we were unable to accept it as Guido had not asked for the objection to be referred to us. When the TIO contacted Guido to discuss the situation, he said he was unsure of land access process and did not know how to object to the carrier's Notice.

* Name of individuals, organisations and companies have been changed.

Case Study D: Carrier and landowner meaningfully consult about proposed activity

Paul* received a Notice from the carrier proposing to install cabling at his property. He responded to the Notice, asking questions and expressing concerns about the proposed activity including the impact to his land and the safety of the work.

The carrier replied to Paul's email responding to each question and providing more information about each concern. When the consultation period ended, Paul still had outstanding concerns and he asked the carrier to refer an objection to the TIO for a decision.

The carrier gave the TIO with information gathered during the consultation period, which provided useful background information. The TIO found the carrier had addressed Paul's key concerns and there was no need to make a direction.

* Name of individuals, organisations and companies have been changed.

2.3 Removal of redundant equipment

We support the Department's proposal to introduce a requirement for removal of redundant equipment. Although the issue of redundant equipment remaining on land is not an issue we consider, landowners regularly raise this with us, sometimes within an objection and sometimes as an enquiry.

The current obligations in the Code of Practice around the removal of temporary facilities³ could provide useful framing for this requirement.

³ See section 4.4A of the [Code of Practice](#): 'Carrier to restore land—removal of temporary facilities'