

# Department of Transport Submission to “Improving the Telecommunications Powers and Immunities Framework” Paper

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Background The Department of Transport (“DoT”) welcomes the opportunity to provide commentary on the Department of Transport, Regional Development & Communications (“Department”) paper titled “Improving the Telecommunications Powers and Immunities Framework” dated September 2020 (“Paper”).

The positions and responses communicated within this submission have been formed through the delivery of the statutory function as the coordinating road authority in the state of Victoria.

This submission is to be read in conjunction to the AustRoads Formal Submission submitted by [REDACTED]. The reader is to assume that where no response has been issued by the author that the commentary provided by AusRoads prevail as noted.

Submission This submission can be published

Responses to the consultation Questions:

## 1. Safety and Notification:

### 1.1 *Do the current safety arrangements provide assurance for the safe and effective implementation of telecommunications equipment?*

Due to the financial environment that the carriers and their consultants operate within that the industry is unable to self-regulate and regularly cut costs which frequently results in unsafe installations being pursued. This is a stark contrast to DoT statutory function which is to optimise Road Safety to all users which creates a tension that carriers and/or their consultants regularly fail to address, resulting in regular redressing by DOT.

### 1.2 *If no, what additional regulatory mechanisms may provide that assurance?*

The only means of bringing about assurance and quality outcomes is amending the act to promote co-operation obligations upon each party rather than conceding against unilateral posturing.

Currently the framework doesn't incentivise cooperation between the carrier and/or representative and the co-ordinating road authority nor does it place enough emphasis on the carriers to comply with the instructions issued by the coordinating road authority where that instruction directly relates to the safety or operation of the road network.

**1.3 Would the addition of a primary safety condition to the code of practice provide that assurance?**

N/A

**1.4 Is there any other information that could be included on a notice would provide clarity on the installation process and timeframes?**

It's been the experience of DoT that each LAAN only contains the minimum information with an over reliance of:

a): mass issue to any/all landholder or;

b): blanket issue across multiple land parcels.

This creates confusion and delay for both parties which leads to poor outcomes (e.g. missed opportunities).

**1.5 What benefits, either financial or non-financial would additional notice and information bring to landowners?**

DoT, through effective industry engagement and the introduction of documents (standards, due diligence) achieved considerable gains in efficiency and outcome.

We therefore advocate that the Department consider mandating the industry to undertake more onerous due diligence and include fit for purpose information as not all sites are like for like which is how the industry currently appear to treat them.

**1.6 If possible, to what extent would the inclusion of a standardised notification process increase or decrease regulatory burden, and at what cost per notification?**

N/A

**1.7 How often has a lack of withdrawal of notice created a financial, or non-financial burden to a landowner? Please provide context to help explain your response?**

N/A

**1.8 To what extent would a notice of withdrawal, provided in a timely manner, reduce this burden?**

N/A

**1.9 What methods have carriers used to notify landowners that a proposed activity would not take place, or was cancelled? How effective are these methods?**

It has been the experience of DOT that no carrier has formally or informally communicated that they wish to withdraw the LAAN once issued and that it was up to DOT to follow the LAAN status.

**1.10 How often would a withdrawal notice be required, and to what extent would this great an additional regulatory burden? If so, what is the anticipated financial regulatory burden each year?**

N/A

**1.11 What benefits would landowner or occupiers see in the provision of an engineering certificate within 30 business days after the certification has been received?**

Limited benefit as it has been DOT's experience that should a site require a bespoke engineering solution than its already too late which has resulted in DOT requiring the certifying engineer to physically inspect the site prior to certification. This small step has addressed numerous structural, compliance and safety issues that existed because of cost cutting measures

**1.12 *Would the provision of an engineering certificate to landowners increase the regulatory burden on carriers? If so, what is the estimated regulatory financial impact per year?***

It has been DOT's experience that the cost is negligible as it leads to higher quality and safer outcomes.

**1.13 *What are the benefits (financial and non-financial) of a non-regulatory approach in providing a longer notification timeframe?***

Since DOT introduced Due Diligence forms for the industry we have seen a reduction in time spent on each matter on the basics and spent more time on the specifics that affect that project. Given the described benefits, it is advocated that greater levels of engagement are promoted within the act.

**1.14 *What are the benefits (financial and non-financial) of a regulatory approach in providing a longer notification timeframe?***

Due to the industry using LAAN's as a means of expediting a compulsory acquisition, a longer notice period would result in several benefits for industry and landlords alike which are:

- Greater due diligence from both issuer and respondent, which in DoT's experience produces better outcomes, as each party has time to investigate, demonstrate, and defend the notice.
- Reduces the combativeness of responding within a short window, particularly if the respondent is a large organisation and the notice is incorrectly sent to the wrong location
- Allows the parties to meaningfully engage with each other without time pressures to resolve minor matters within a short window

**1.15 *Should longer notification timeframes apply to all landowners, and not be limited to landowners that are public utilities and road authorities?***

N/A

**1.16 *What would be the benefits (financial and non-financial) of providing a longer timeframe for objections to be made to carriers about proposed activities?***

N/A

**1.17 *What other factors should be considered when considering whether to extend notification or objection timeframes?***

N/A

## **2 Objections and Protections**

**2.1** Is the objections process as set out in the Code of Practice clear and easily understood by landowners and occupiers? If no, what parts of the process need further explanation?

N/A

**2.2** Does the information provided by carriers when giving notice of a proposed activity outline the objections process, or only the first step, that is, to make the objection in writing to the carrier?

N/A

**2.3 *How could the objection process be better communicated to landowners and occupiers?***

N/A

**2.4 What benefits or disadvantages are there in including a carrier as a party that can initiate dispute resolution with the TIO?**

DOT do not agree to the carrier referring objections to the TIO without austere limitation. DOT advocates that the Carrier must be made to use best endeavours to resolve a raised objection within a specific timeframe

**2.5 To what extent would this inclusion increase, or decrease, the financial and non-financial burden on carriers or landowners during a dispute?**

To have a matter progress to the TIO is both expensive and timely which is outside the “accessible” dispute resolution framework. Therefore, to defend a position, the becomes either an expensive or timely proposal which will further tarnish the industry particularly when the respondent (e.g. landlord) do not have the capacity to mount either a technical or legal rebuttal.

As the LAAN process is a form of acquisition it's considered reasonable that carriers cover the expenses associated with dispute within reason.

**2.6 What financial or non-financial burden, if any, would the inclusion of a deadline on carriers to lodge an objection with the TIO have?**

N/A

**2.7 If there is support for the proposal to include a deadline on carriers to lodge an objection with the TIO, what timeframe should apply?**

N/A

**2.8 The Code of Practice is the appropriate instrument to determine when redundant equipment should be removed before the landlord can remove the equipment at the carriers cost without recourse.**

N/A

**2.9 What regulatory burden (financial or non-financial) would occur if these options were enacted?**

N/A

**2.10 Are there other non-regulatory ways to better enforce the policy position that equipment is removed if not used?**

N/A

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

**3.1 Are there alternative options that would reduce impacts to visual amenity while providing necessary coverage for a modern telecommunications service?**

N/A

**3.2 Would these options strike a balance between visual amenity and the need to maintain telecommunications services?**

N/A

**3.3 What benefits or disadvantages (financial or non-financial) would occur as a result of implementing these options?**

N/A

**3.4 What benefits or disadvantages (financial or non-financial) would occur as a result of implementing this option?**

N/A

**3.5 Are there any other conditions or issues that should be considered if this proposal was to proceed? Should smart or slim line poles, under certain conditions, be considered as low visual impact? If so, what should those conditions be?**

DOT acknowledges the need to redefine the definition of a "low Impact" facility however the prospect of a 15m+ pole within road reserve presents several road safety challenges and therefore oppose its inclusion within the definitions. DOT advocate that due the technical advances the industry has made since the Low Impact Determination was first drafted that the entire definitions be refreshed to articulate current industry practice.

We do support the ability of the industry to operate without Development Application on a very limited basis subject to certain parameters.

**3.6 What other suggestions would help to categorise a smart or slim pole as of low visual impact? What alternatives to this option better meet the need for a national approach to telecommunications infrastructure investment that balances the need for visual amenity?**

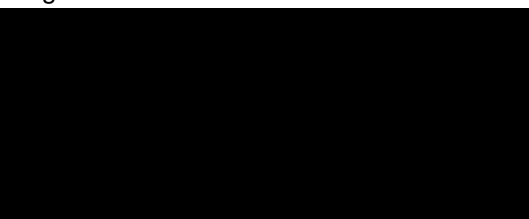
DOT will not support the doubling of the volumetric allowance for additional equipment upon a pole and/or street asset ("site") as it will lead to the proliferation of multiple antennas per site which will adversely impact upon the streetscape and generate significant community engagement burden.

Because of points 3.5 & 3.6, DOT will not encourage the co-location of telecommunication infrastructure upon Smart Poles if included within the definition.

**3.7 What benefits or disadvantages (financial or non-financial) would occur as a result of implementing these options?**

N/A

Regards



Department of Transport