

15 October 2020

Our Ref: [REDACTED]

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

By email: powersandimmunities@communications.gov.au

Submission: Improving the telecommunications powers and immunities framework

The Western Australian Local Government Association (the Association) is the united voice of Local Government in Western Australia. The Association is independent and membership-based representing and supporting the work and interests of 139 Local Governments in Western Australia. The Association provides an essential voice for 1,222 elected members and approximately 15,000 Local Government employees as well as over 2.6 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services providing financial benefits to Local Governments and the communities they serve.

Thank you for the opportunity to respond to your proposals concerning the telecommunications powers and immunities framework and we welcome your endeavours to improve the framework. It is the best interest of telecommunications carriers to work in collaboration with public infrastructure managers during both the planning and installation phases and our response is focused on improving this relationship.

1. Safety and notification

WALGA agrees that standardising notifications, providing engineering certification and extending notification timeframes will improve the framework. However, this is insufficient for certain activities.

Road managers have a responsibility to ensure that the road reserve is maintained in a safe and functional state. While the original purpose of defining certain installations as “low impact” to provide carriers with the flexibility to fulfil their functions is acknowledged, some of the activities defined as low impact are of significant impact to the road manager. Of particular note are the activities of trenching through the road or footpath, installation of a network of antennas as envisaged for the 5G roll out and the erection of significant infrastructure such as antennas and towers in the road verge.

These activities can potentially pose significant safety and logistical issues both during and after installation. Examples include, traffic management, protection of site works, restoration and reinstatement of roads, paths and other infrastructure, interference with site lines, obstruction to functionality and clashes with future works. There have been many instances where a trench reinstatement has failed several years later and the Local Government is left with the burden and cost of repair.

It is for this reason that Local Governments require that these activities are subject to approval by the Local Government in accordance with the Land Administration Act 1997. WALGA has assisted Local Governments to manage works in the road reserve by compiling policy and specification guidelines¹ that are available on our website. It is in the interest of both carriers and road managers that they engage with Local Government at the earliest so that agreed reinstatement specifications and acceptable locations are agreed. The list of activities defined as “low impact” should be reviewed and activities such as trenching and installation of a network of arials should be subject to approval from the road manager.

I refer you to my submission into the recent Parliamentary Inquiry into the deployment, adoption and application of 5G in Australia (copied at the end of this submission) which proposes a solution to the issues raised above. It is noted that recommendation 5 from the Inquiry states: The Committee recommends that carriers work with state and territory road and transport infrastructure managers to ensure that safety standards are maintained. We are of the view that “work with” implies action well beyond a mere “notification process”.

WALGA supports the requirement to provide engineering certification. Extension of the minimum notification timeframe from 10 to 20 business days and extension of the timeframe to provide a written objection to the carrier from 5 to 10 business days is supported as a step in the right direction. However, this doesn’t replace the need to critically review the activities listed as “low impact”

2. Objections and protections

As highlighted above, all activities in the road reserve place responsibilities on the road manager and should be subject to a more rigorous consultation process and this should be acknowledged in both the Act and the Code of Practice. Road Managers should be engaged throughout the planning and installation process and certainly before a dispute is referred for resolution. Engagement as opposed to notification will benefit the Carrier and reduce the possibility of objections to the activity and possible rectifications or relocations that may be required after the activity is completed. Western Australian Local Governments do not support the referral of objections regarding “significant” work in the road reserve without consulting the road manager. Resolution would be subject to review of the list of “low impact” activities.

¹ <https://walga.asn.au/getattachment/Policy-Advice-and-Advocacy/Infrastructure/Roads/Restoration-and-Reinstatement-Guidelines-Draft-Final.pdf?lang=en-AU>

Regarding redundant equipment, the Association recommends option 2; because by inclusion in the Code of Practice the requirement would be easier to source and understand by both carriers and road managers and therefore likely to provide greater compliance.

Road managers and other landowners are not in a position to be well informed about which equipment is no longer in use and unlikely to be required in future. The default position should be a requirement for carriers to remove redundant equipment, unless it can be demonstrated that this is impractical or will result in consequential damage. Any alternative is equivalent to littering in the environment, and potentially impose a significant cost on future generations.

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

This proposal to increase antenna protrusions from 3m to 5m represents a significant variation in scale and mass of LIFD and is not supported. The changes would have a significant impact on residential and town centre amenity and whilst requirements to match the colour of the infrastructure to its surrounding would assist to reduce negative amenity impacts, the proposal is considered excessive and 5m protruding equipment should be subject to merit based assessment and not included as low impact facilities. Some consideration of 5m high antennas as low impact facilities could be considered where these occur in industrial or commercial areas and are a reasonable distance (say 200m) from existing residential areas.

No robust justification for the change other than coverage issues are provided in the consultation paper. There may be scope to consider the installation of an antenna between 3m and 5m as a low impact facility in residential areas where it can be proven by the applicant that the existence of a 5m antenna will lead to the reduction in the number of antenna overall. The concept of 'net community benefit' could be applied in these scenarios.

Since your proposal does highlight the roll out of 5G infrastructure, the recommendations from the recent Parliamentary Inquiry into the deployment, adoption and application of 5G in Australia are relevant. Copied below are parts of our submission to the inquiry which are relevant to this consultation paper and it is recommended you could consider this request along with the findings and recommendations of this Inquiry in the telecommunications powers and immunities framework improvement process.

"Many Councils have contacted us for advice in relation to the requirements for Carriers to consult with them before installation of 5G infrastructure. 5G antennas would appear to be defined as low impact according to the industry code, C564:2011 Mobile Phone Base Station Deployment and the Telecommunications (Low Impact Facilities) Determination 2018 and therefore Carriers are only required to follow the notification process. It appears that one individual aerial would fall under the Schedule 5 process in the Code but the Code does not address the scenario of a network of many aerials required say on every other pole down a street which is the likely scenario for 5G.

We are of the view that this scenario is not “low impact” and that a Schedule 5 process is inadequate and there should be an obligation to follow a Schedule 6 type process. For example installing many aerals on alternative light poles down a street can have numerous impacts that require careful consideration by the asset owner including operations of LED lighting and associated smart components, restricting functionality and access to install flags and banners for events and adverse effect to the aesthetics of decorative poles (e.g. colour, bulk and position). The view is that carriers should consult and obtain agreement with Councils and stakeholders in line with Schedule 6.

The Association proposes that the Inquiry consider amending the Code to include the following: “If a small scale installation requires the installation of multiple facilities that are to be attached to Council poles or other infrastructure, then the Carrier must adequately engage and consult with Council and may not proceed until they have agreement on the proposal.” It is further recommended that the enquiry consider the drafting of a standard agreement after consultation with the affected parties.”

I thank you once again for the opportunity to provide feedback. Should you wish to obtain further clarity on any of these issues please contact:

[REDACTED]

This submission is not confidential and can be made public.

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