



nbn™ submission in response to
Department of Communications and the Arts
- Exposure Drafts to *Telecommunications
(Low-Impact Facilities) Determination 2018*
and the *Telecommunications Code of Practice
2018*

20 December 2019



nbn thanks the Department of Communications and the Arts (the Department) for the opportunity to provide commentary on their proposed exposure drafts of *Telecommunications (Low-Impact Facilities) Determination 2018 (LIFD)* and the *Telecommunications Code of Practice 2018 (the Code)*.

We offer the following comments:

1 Telecommunications (Low-Impact Facilities) Determination 2018

- 1) Definition of 'maintenance' – **nbn** suggests this should also include a reference to 'Part 6A of the Schedule', not just Part 1.
- 2) Definition of 'original facility' – **nbn** suggests the current reference to 'this Schedule' is incorrect and should refer at least to Part 8 of this Schedule.
- 3) **nbn** supports the Department's amendment to the definition of 'radiocommunications facility' at Item 8, Part 1 of the Schedule.
- 4) Unfortunately, the terms proposed under 1(e)(i) of new Part 6A of the Schedule to the LIFD are inconsistent with the power to install temporary facilities under clause 7(3A) of Schedule 3 of the Act. The current drafting has the unfortunate effect of establishing a new category of temporary low-impact facilities (to be installed using the installation power) where it overlaps with temporary facilities that are already able to be installed using the maintenance power under clause 7(3A) of Schedule 3.

This inconsistency between the two instruments is likely to create issues of compliance, particularly where maintenance is needed for a facility urgently or carriers must act swiftly to prevent disruption to the supply of carriage services.

nbn would prefer clause 7(3A) of Schedule 3 of the Telecommunications Act (**the Act**) be relied upon without further unnecessary qualification in the LIFD. It may be useful for a reference in the LIFD be included to refer to the relevant clause within the Act as a note.

- 5) It is not clear whether the term 'replacement' referred to in item 1(e)(ii) of new Part 6A is broader in meaning than the reference to 'replacement' in clause 7(3A). **nbn** suggests the term 'replacement' be defined in the LIFD to include both like-for-like replacement of the whole or a part of the original facility in its original location, and also allows carriers to install temporary low-impact facilities for maintenance purposes that include upgrades.
- 6) Section 3.1(b) of the LIFD provides that where a facility is to be installed in an 'Area of Environmental Significance' (**AOES**) it is not a low-impact facility. The proposed amendments do not improve the position of carriers proposing to install temporary low-impact facilities in an AOES. AOESs frequently include reserves, national and other parks, and areas subject to heritage protection, both in rural and urban areas. These areas are commonly the site of holidays, public events and/or emergencies, and **nbn** suggests the Department may wish to consider s 3.1(b) of the LIFD be amended so that it does not apply to temporary facilities (as defined in the LIFD). This amendment would be consistent with the broader intention to remove regulatory barriers for carriers in relation to deploying low-impact facilities in temporary situations.
- 7) Lastly, **nbn** suggests that reference to 'this Schedule' be redrafted for consistency through the exposure draft. For example, s 1.5 of the LIFD variously includes the terms: '*of the Schedule*', '*to the Schedule*' and '*to this Schedule*'.



2 Telecommunications Code of Practice 2018

- 8) **nbn** notes the Department is proposing to make a couple of administrative updates to the Code by removing obsolete references to 'Nature Conservation Director'. **nbn** is supportive of removing these references.

nbn encourages the Department to take these amendments further and remove obligations to notify the Director of National Parks and the Environment Secretary altogether. In **nbn's** experience, these notification obligations are broadly drafted, difficult to apply in practice and are a rare occurrence for **nbn**. Public land managers are already notified through owner/occupier notification arrangements, and Federal/ State-based approval processes apply for installation in an AOES.

- 9) **nbn** supports the suggested amendment to add a new Note 3 under clauses 2.7, 3.7, 4.7, 5.7 and 6.7.

10) Notice to owner and occupier of land (s 4.23(3A))

- **nbn** would like to ensure that notification processes for temporary facilities are consistent with the general notice requirements for installation of other low-impact facilities as much as possible. We recognise there are some information requirements needed to describe to the landowner the reason for the notice. However, in many cases, a carrier will be exempt from having to serve a notice in respect of installing a temporary low-impact facility. The exemption where the installation needs to be carried out 'without delay in order to protect ...the maintenance of an adequate level of service' (clause 17(6)(b)(v) of Schedule 3) is likely to apply.
- The new notification requirements are highly prescriptive and go above what is required under Schedule 3 of the Act. For example, the requirement to specify the precise day on which the facility is planned to be installed and removed may be difficult to determine.
- The new note directly above section 4.23, 'Several of the sections in this Division are provided for information only...' is confusing as it does not specify which sections are for information only. **nbn** suggests this note be deleted and, as a general principle, remove all duplicative content which is included. Notes which refer to the relevant clauses in another instrument, e.g. the Act of the LIFD, are preferred.

11) Carriers to remove temporary facilities (ss 4.3A, 4.4A, 4.4B, 4.4C, 6.3A, 6.4A)

nbn notes these clauses simply re-state obligations under Schedule 3 of the Act. Our preferred approach would be to streamline the Code so as to avoid re-stating existing obligations under the Act, which in **nbn's** view is unnecessary and confusing. Again, **nbn** suggests it would be more useful to refer to the relevant sections of the LIFD or the Act as per the notes drafted under s4.3A subclauses, i.e. "Note: See Items 13 and 14 of Part 1 and Item 1 of Part 6A of the Schedule to the LIFD".

12) Records of certain facilities (ss 4.10, 6.10)

- These are new obligations not found under the Act, and therefore **nbn** suggests, if included, should be under Part 3 (Additional carrier conditions), rather than Part 2 (Conditions in the Act for carrier conduct).
- **nbn** would prefer consistent record-keeping obligations for all low-impact facilities. It's not clear why it's necessary to keep certain records specifically for temporary low-impact facilities. The other facilities for which a carrier needs to keep records are those covered by the facilities access regime under Schedule 1 of the Act. It's not necessary to keep records for other low-impact facilities that are not subject to the Schedule 1 access regime.

- 13) Lastly, **nbn** suggests it would also be prudent for the Department to amend the requirement to comply with State and Territory noise laws from 10pm to 7am under ss 2.12, 3.12, 4.12 and 6.12 of the Code. This will



allow low-impact facilities to be deployed more quickly in an emergency situation as it is used in Part 7 of the LIFD.