

To the Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601

Submission response—Possible amendments to telecommunications powers and immunities

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Yes / ~~No~~.

Date of submission

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Logo of organisation—if an organisation making this submission

Roads Corporation – trading as VicRoads (Victorian State road authority)

Name and contact details of person/organisation making submission

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General comments

VicRoads, as the State road authority in Victoria responsible for the safe and efficient operation of the State's major roads (ie. in the order of 22,000 kilometres of freeways and arterial roads), has significant concerns with the public consultation paper on proposed changes to telecommunications carriers' powers and immunities. VicRoads does not accept that the proposed changes will save the government and community the regulatory savings suggested by industry. If adopted, these changes would fundamentally change the existing framework under which telecommunications carriers (Carriers) interact with road authorities and other infrastructure owners / managers. Further, the proposed changes are likely to adversely impact on VicRoads' ability to fulfil its statutory road management responsibilities to manage the State's road network for all road users in a safe and efficient manner, including its ability to manage workplace health and safety obligations.

While the proposed changes may result in cost and time savings for Carriers, road authorities on the other hand are likely to experience higher direct and indirect costs for the construction and maintenance of their infrastructure. VicRoads is strongly of the view that any claimed additional Carrier deployment costs or delays to facility installation projects can be avoided through early consultation and the exchange of information, between road authorities and Carriers, regarding future development plans so that any issues can be identified and resolved at an early stage without impacting on a project's delivery. This consultation approach is strongly recommended in the joint Austroads (AP-G72/07) and Communications Alliance (G591:2006) document entitled '*Telecommunications in Road Reserves: Operational Guidelines for Installations*'.

VicRoads requests that this submission be considered in conjunction with that made by the Queensland Department of Transport and Main Roads, being a submission which it strongly supports.

Responses

The Australian Government seeks views on possible amendments to telecommunications carrier powers and immunities. In particular, the Government seeks views on:

Proposed amendments to the Telecommunications (Low-impact Facilities) Determination 1997

11. Cabinets for tower equipment

11.1 Are there any issues with the proposed new cabinet type?

The proposal to include cabinets installed near fixed wireless towers as low-impact facilities is not supported. The location of cabinets within the road reserve has the potential to create road safety hazards if located within the 'clear zone' of a road. A 'clear zone' is an area adjacent to the roadway which should be kept free of features (eg. trees, rigid (or non-frangible) poles, cabinets) that could potentially be hazardous to errant vehicles, and where this is not reasonably practicable, then consideration needs to be given to the use of safety barriers as a form of road user protection. The location of cabinets may also obstruct the sight distance of road users in the vicinity of intersections, driveway entrances and on the inside of curves in the road alignment. It is important, therefore, that road authorities be given the opportunity to undertake detailed assessments of any proposal to locate such cabinets within the road reserve, and not just rely on receiving a Carrier notice.

14. Cable & conduit installation on or under bridges

14.1 Are there any issues with allowing cable and conduit on bridges to be low-impact facilities?

VicRoads has significant concerns with the proposed amendment to allow cables and conduits to be attached to or under bridges and other road authority structures (eg. light poles, overhead signs, traffic signal pedestals) as low-impact facilities. While the attachment of telecommunications carrier (Carrier) facilities to these road authority bridges or structures (herein referred to as 'structures') may be the most appropriate solution in a particular case, a detailed assessment is required to ensure that any such attachment will not adversely impact on the structural integrity of the structure. The current joint Austroads (AP-G72/07) and Communications Alliance (G591:2006) document entitled '*Telecommunications in Road Reserves: Operational Guidelines for Installations*' (the 'Guidelines' - Chapter 6 refers) recognises that an assessment of a proposal to attach a telecommunications facility to a road authority structure should consider:

- the method of attachment, which should not involve drilling into any of the structure.
- any likely interference with the road authority's ability to physically inspect or maintain the structure.
- the impact of the attachment should not compromise the health and safety of road authority staff required to carry out maintenance work on the structure - joint road authority / Carrier work procedures may need to be developed to ensure compliance with all relevant OH&S requirements.
- the impact of the attachment on the visual amenity (or architectural or heritage features) of the structure. For VicRoads, the impact on the visual amenity of a bridge is important as it frequently goes to significant effort (and cost) to achieve aesthetically appealing bridges, especially in environmentally sensitive areas.

Such an assessment, which should only be undertaken by the road authority, would also need to consider any possible road safety / road user implications and any implications associated with future road authority maintenance, rehabilitation, widening or replacement proposals. VicRoads (and road authorities in general) is uniquely placed in its knowledge of the history and specific design / construction aspects of its structures that Carriers will have no knowledge of or expertise in dealing with - this expert knowledge can range from retrofitted tension cables, carbon fibre, paint treatments that can be easily compromised, etc. Further, VicRoads standards are in some cases different to those of other industry sectors. As one example, while VicRoads does not support the use of epoxy dowels in concrete bridge structures, other general industry sectors do - it is not considered appropriate, therefore, for VicRoads to work to one standard while a Carrier potentially uses another or lesser standard. VicRoads experience has also shown that in some cases, the design of Carrier facilities is undertaken by interstate consultants who have not visited the site, and therefore, do not appreciate the site specific issues associated with a particular structure, road safety or road reserve environmental / vegetation conditions.

While VicRoads principle concern relates to the attachment of conduits and cables to road bridges, also of concern is the attachment of telecommunications facilities in general to other road infrastructure such as road signs, traffic signals and road lighting. These infrastructure items are essential to the safe and efficient operation of the road network and require higher (and different) standards of attachment than when compared with other public utility structures. Again, it is important to stress that road authorities require the ability to undertake detailed assessments of all proposals to attach telecommunications facilities to all road authority structures.

The current accepted practice, as set out in the Guidelines, provides that the road authority and Carrier enter into an agreement covering the terms and conditions for a proposal to attach a facility to a road authority structure, including the method of attachment, maintenance access, indemnity for damage, responsibility for relocation costs (eg. where a road authority proposes to widened or replace a bridge). VicRoads has had experiences in the past where telecommunications (or other public utility) assets have been attached to one of its bridges without an agreement being put in place, resulting in significant time and effort in trying to resolve cost responsibilities for the relocation of telecommunication / utility assets when a bridge is planned to be widened / upgraded (and usually, this cost falls to the road authority).

In addition to all of the above considerations, it is not considered practical for a road authority to be able to fully assess a proposal to attach a telecommunications facility to its structure, and negotiate the terms of an agreement with the Carrier, within the 10 day LAAN notice period should the attachment be classed as a low-impact facility. However, it is considered important to note that retention of the current position should not impose any additional deployment costs or delays on the Carrier because the Carrier, under Schedule 3 of the Telecommunications Act, is required to seek road authority agreement where the Carrier's activities are likely to affect the road authority's operations. It is considered unlikely that a Carrier proposal to attach a facility to a road authority structure would be a short term proposal, but more the result of a longer term planning process for the upgrading or expanding of the existing telecommunications network. Any potential deployment costs or delays can be avoided through early consultation and the exchange of information regarding future development plans so that any issues can be identified and resolved at an early stage without impacting on a project's delivery. This consultation approach is strongly recommended in the Guidelines (Chapter 3 refers), and can be undertaken at two levels - firstly at the program level as the need for future works are first identified and concepts are developed, and secondly, at the project level as detailed plans are prepared. In this way, road authority agreement can be achieved before the Carrier is required to issue its LAAN notice.

15. Volume restrictions on co-located facilities

15.1 Are there any issues with removing volume limits for adding co-located facilities to existing facilities and public utility structures in commercial areas?

As with the attachment of conduits and cables to road authority structures (item 14. above), VicRoads has some concerns with the proposed amendment to increase, or even remove, volume restrictions on a Carrier's ability to add facilities to existing public utility structures (eg. road signs, street lighting, traffic signals). While the attachment of additional Carrier facilities to an existing facility may be the most appropriate solution in a particular case, these proposed volume increases are considered significant and would require a detailed assessment by the road authority to ensure that any such additional attachment will not adversely impact on the structural integrity or the safe and continuous operation of an existing road authority (public utility) structure (eg. traffic signals or road signs in particular). Further, VicRoads strongly considers that the Carrier should enter into an agreement with the road authority that documents the terms and conditions for a proposal to increase the volume of an existing facility to a road authority structure, including the method of attachment, maintenance access, indemnity for damage, responsibility for relocation costs (eg. where a road authority proposes to replace, repair or remove a structure).

While it is recognised that a Carrier will still be required to issue a LAAN to the road authority, the 10 day period may be insufficient for the road authority to undertake a full and proper assessment of the proposal for the reasons given above.

It is also noted that, under Victorian legislation, Regulations made under the *Road Safety Act 1986* (which can operate concurrently with the Telecommunications Act and to which Carriers must comply without exemption), being the Road Safety (Traffic Management) Regulations 2009, a person must not, without the authorisation of the relevant road authority, erect, display or place on a road, in a road related area, or in the view of a person on a road or road related area, anything that—

- interferes with the effectiveness of a traffic control device.
- prevents an approaching driver or other road user from clearly distinguishing the whole or any part of a traffic control device.

Therefore, in the case of traffic signals, a Carrier would require authorisation from VicRoads before any telecommunications facility can be attached to the traffic signals, whether for a new facility or a volume increase to an existing facility.

15.2 Are there any issues with permitting new co-located facilities that are up to 50 per cent of the volume of the original facility or public utility structure in residential areas?

Refer response to 15.1.

15.3 Is another volume limit more appropriate in commercial or residential areas?

Refer response to 15.1.

15.4 Should alternative arrangements for co-located facilities be developed in the LIFD?

It is considered that the current arrangements should be retained, with increased good practice guidance emphasising the need for Carriers to reach agreement with the road authority prior to the issuing of a LAAN.

Proposed amendments to the Telecommunications Code of Practice 1997

18. LAAN objection periods

- 18.1 Is it reasonable to end the objection period for low-impact facility activities and maintenance work according to when the notice was issued, rather than the date work is expected to commence?

VicRoads encourages early consultation (and agreement) on proposed Carrier projects (consistent with the approach outlined in Chapter 3 of the Guidelines - refer also to the response to Question 14.1 above), thereby significantly reducing the likelihood of any road authority objections. However, the current 5 day objection period places significant onus on the road authority to review and form a position on a Carrier proposal (especially where a notice contains incomplete or imprecise details), with a possible outcome being an increased likelihood of a road authority simply issuing an 'automatic' objection without reviewing the proposal in any detail. Examples include notices being received for projects with planned commencement in 3 to 6 months time but for which VicRoads is expected to evaluate and respond within 5 days. Further, such broad and imprecise works commencement dates make it very difficult for road authorities to manage the road network and put in place any necessary temporary traffic management arrangements to minimise any adverse impacts due to the Carrier works (and ensure the safety of the worksite for both road users and Carrier workers) when the date of the works is not accurately known, or the works are rescheduled at short notice. It is considered that the Code should require Carriers, as best practice, to (re)confirm the works within 10 days of the scheduled commencement date.

- 18.2 Is 5 business days from the receipt of a notice a sufficient time period for land owners and occupiers to object to carrier activities where carriers have given more than 10 days' notice about planned activities?

Refer response to Question 18.1.

19. Allow carriers to refer land owner and occupier objections to the TIO

- 19.1 Are there any issues with allowing carriers to refer objections to the TIO before land owners and occupiers have requested them to?

The proposed change is viewed as encouraging a Carrier to go directly to the TIO without first seeking to negotiate and achieve an acceptable resolution of the objection with the road authority (or land owner). It is considered that the Carrier should not be able to refer directly to the TIO without having first made a genuine attempt to resolve the matter, perhaps by putting a time limit on when a Carrier referral to the TIO can be made after the Carrier has received a road authority objection - this would place some obligation on the Carrier to attempt to resolve the objection. The current proposal has the potential to impose significant resource and legal costs on a road authority.

Possible amendments to the *Telecommunications Act 1997*

21. Allowing some types of poles to be low-impact facilities

- 21.1 Is it reasonable for poles in rural areas for telecommunications and electricity cabling for telecommunications networks to be low-impact facilities?

VicRoads has significant concerns about the ability of a Carrier to install poles of up to 12 metres in height (and 500 mm in diameter) as 'low impact' facilities within the road reserve. Poles up to this size represent a significant road safety hazard and are inconsistent with the safe system philosophy adopted by VicRoads in which it seeks to provide a forgiving roadside to ensure that road crashes do not result in fatal or serious injury (consistent with the Victorian State Government's 'Towards Zero 2016-2020' road safety strategy). This applies whether the poles are to be placed in an urban or rural area. Road authorities must have the opportunity to fully review and approve any such

proposals to locate poles within the road reserve. The proposed change would also have the potential to significantly increase the costs to road authorities where it has future roadwork proposals (eg. widening / duplication of existing roads, new road alignments) that would require the relocation of Carrier poles. It is again emphasised that VicRoads encourages early consultation (and agreement) on proposed Carrier projects (consistent with the approach outlined in Chapter 3 of the Guidelines), thereby significantly reducing the likelihood of any road authority objections and cost / delay implications for Carrier projects. Further, electrical safety issues are paramount and road authorities should, therefore, have the ability to assess any potential impact on the operation and safety of its electrical systems (eg. traffic signals, electronic road signs).

21.2 Should low-impact facility poles be allowed in other areas, or be restricted to rural areas?

Poles within the road reserve of any size (whether telecommunications facilities or public utility owned) represent a significant road safety hazard and are inconsistent with the safe system philosophy adopted by VicRoads in which it seeks to provide a forgiving roadside to ensure that road crashes do not result in fatal or serious injury (consistent with the Victorian State Government's 'Towards Zero 2016-2020' road safety strategy). This applies whether the poles are to be placed in an urban or rural area. Road authorities must have the opportunity to fully review and approve any such proposals to locate poles within the road reserve. The proposed change would also have the potential to significantly increase the costs to road authorities where it has future roadwork proposals that would require the relocation of poles of the size proposed.

21.3 Is the proposed size restriction of up to 12 metres high with a diameter of up to 500mm suitable?

Refer responses to 21.1 and 21.2 above.

21.4 Would the existing notification and objection processes for land owners and occupiers in the Tel Code be sufficient, or should there be additional consultation requirements?

At a minimum, the existing notification and objection processes should apply, but with Carriers required to reach agreement with the road authority before notice is given.

23. Replacement mobile towers

23.1 Is the proposal reasonable?

This proposal is not supported. It is not considered reasonable to consider the replacement of an existing tower, at a new location (within 20 metres of the existing tower to be replaced and removed) as maintenance. This involves the placement within the road reserve of another road safety hazard that conflicts with the safe system philosophy adopted by VicRoads in which it seeks to provide a forgiving roadside to ensure that road crashes do not result in fatal or serious injury (consistent with the Victorian State Government's 'Towards Zero 2016-2020' road safety strategy). Road authorities must have the opportunity to fully review and approve any such proposals to locate replacement towers within the road reserve. With existing road reserves now having very limited spare available space for the installation of new utility infrastructure, there is a very real possibility that a suitable location within 20 metres of the tower to be replaced will be not found. The proposed change would also have the potential to significantly increase the costs to road authorities where it has future roadwork proposals that would require the relocation of a replacement tower. Road authorities must have the opportunity to fully review and approve any such proposals to locate replacement towers within the road reserve.

23.2 Is 20 metres a suitable distance restriction for replacement towers?

With existing road reserves now having very limited spare available space for the installation of new utility infrastructure, there is a very real possibility that a suitable location within 20 metres of

the tower to be replaced will not be found. Road authorities must have the opportunity to fully review and approve any such proposals to locate replacement towers within the road reserve.

23.3 Is 12 weeks a reasonable maximum time period for installation of replacement towers?

Where an existing tower is to be replaced, its removal should occur as soon as reasonably practicable, and preferably immediately after the new tower has been installed and is operational.