



Australian Mobile Telecommunications Association and Communications Alliance

Submission to the Department of Infrastructure Transport Regional Development and Communications

Improving the telecommunications powers and immunities framework (September 2020)

Submission Date: 30 October 2020

1. Introduction

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see www.amta.org.au.

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups. Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see www.commsalliance.com.au.

AMTA and Communications Alliance (the Associations) welcome the opportunity to provide comments to the Department of Infrastructure Transport Regional Development and Communications (DoITRDC) on its discussion paper *"Improving the powers and immunities framework"* September 2020.

2. Background

Australia's mobile network operators continue to invest in the deployment of 4G, and increasingly 5G, networks and we note that the pace of deployment has not slowed due to COVID-19.¹

This includes their significant long-term investment in the purchase of spectrum licences. This investment is not only significant for the billions of dollars it contributes to Government revenue but, more importantly, for its economic and social impact as an enabling technology. But the economic and social benefits from mobile usage can only be realised through the deployment of mobile networks. To realise these benefits, it is imperative that mobile network operators are able to deploy the associated network infrastructure efficiently, economically and in a timely manner.

The Associations have been in continuous discussions with the Department for some years regarding a suite of proposed amendments to the Low Impact Facilities Determination (LIFD), the Telecommunications Code of Practice (Code) and the Telecommunications Act, Schedule 3 (the Act). The Associations are pleased that the Department's Consultation Paper on improvements to the carriers' powers and immunities framework continues to progress these discussions towards implementation.

¹ ChannelNews, [Telstra 5G rollout undeterred by coronavirus](#), 26 May 2020

The Associations also note that some new reforms intended to enhance landholders understanding and opportunity to engage with this framework, and to address concerns expressed by landholders in previous consultation processes, have now been included. The Associations are keen to provide their views and feedback on these proposals within this submission.

Economic benefits of Mobile Broadband

Mobile broadband continues to play a key role in stimulating Australia's economic growth and productivity. It is a driving force in connecting people and businesses, stimulating innovation and technological progress, and transforming industries. Ongoing development of mobile and fixed wireless technologies, such as 5G, the Internet of Things (IoT) and Machine to Machine (M2M) applications are re-shaping the Australian economy and will drive very significant productivity improvements.

The *Mobile Nation 2019 – The 5G Future*² report by Deloitte Access Economics found that the mobile industry continues to make a significant contribution to Australia's economy. Deloitte Access Economics estimates that the mobile industry contributed \$22.9 billion of value added to GDP in 2017-18. This figure includes \$8.2 billion contributed directly from mobile industry activities as well as \$14.7 billion supported through indirect activity in related sectors and across the economy. The mobile industry also supported approximately 116,100 full time equivalent employees. For every full-time employee in the mobile industry there are 3.7 full time roles supported in other sectors.

Beyond the value added to GDP and the employment contribution of mobile telecommunications, mobile technologies, including 5G, continue to drive productivity throughout the Australian economy. While productivity has generally declined over the last decade, mobile technologies have boosted both labour and capital productivity. Deloitte Access Economics estimates that the productivity impact of mobile will be equivalent to \$2 500 for every Australian by 2023. This amounts to a total of \$65 billion of additional GDP by 2023, or 3.1% increase in GDP which is more than the 2.8% contribution of the agricultural sector in 2018.

As the world starts to recover from the impacts of COVID-19, we expect that 5G will continue to be an even more significant driver of economic growth and play a key role in Australia's recovery as it enables service providers to offer cost-effective technology to meet consumer demand for data and new advanced 5G services.³

Demand for Mobile Broadband continues to grow

The global demand for mobile broadband continues to grow and the evolution of 5G and IoT services will place even greater pressure on the capability of industry to meet growing demand without appropriate regulatory reform facilitating network deployment to support the new services.

² Deloitte Access Economics, [Mobile Nation 2019- The 5G Future](#), commissioned by AMTA 2019.

³ Ericsson and Arthur D. Little, [5G for business: a 2030 market compass](#), Oct 2019, page 3

Recent research also points to the potential of 5G for consumers ⁴ with a key finding that data usage for one in five users could reach more than 160GB per month on a 5G device by 2025. Other key findings were:

- Australian consumers expect 5G to provide relief from urban network congestion in the near term - *especially in Australia's bigger cities, where nearly half (47%) smartphone users report facing network issues in crowded areas* - and to create new home broadband choices.
- Current 4G usage patterns are not indicative of future usage behaviours. Video consumption is set to rise significantly with 5G. Australian consumers expect to not only stream video in higher resolutions but also use immersive video intensive media such as Augmented Reality (AR) and Virtual Reality (VR), resulting in an additional two hours of video content being watched weekly on mobile devices by users in the 5G future when they are out and about, including half an hour wearing AR glasses or VR headsets.
- Consumers are willing to pay a premium on 5G. For the smartphone use case, Australian users are stating that they are willing to pay 20 percent more for fifth-generation services, and early adopters as much as 42 percent more.⁵

AMTA further notes that 4G was optimised for smartphones whereas 5G is designed to open up new use cases across many new types of devices. 5G will not simply deliver more capacity for growth of existing usage, but broaden the applications of usage across both industrial and consumer use cases

Preparing for 5G

The Associations note that the proposed amendments that appear in Section 3 of the discussion paper and which have already been presented to stakeholders in previous consultation processes will pave the way for further flexibility to be built into the regulatory framework. This will assist to enable a timely and efficient deployment of infrastructure to meet the demand for 5G services across Australia.

The new amendments appearing in earlier parts of the discussion paper potentially add new regulatory obligations and associated compliance costs on network operators (for example, removing redundant equipment and providing engineering certification), which need to be carefully assessed for their impact in delaying the timely provision of 5G to the Australian public.

3. Consultation Paper Questions and our responses

Many of the amendments to improve the efficiency of telecommunications infrastructure deployment outlined in the consultation paper were requested by our members in previous submissions to the Department. The Associations therefore support those amendments and the supporting statements made in the consultation paper. There may be some differences amongst

⁴ Ericsson 5G Consumer Potential report, 2019

⁵ Ericsson 5G Consumer Potential report, 2019

individual members and for these we direct the Department to our individual members' separate submissions.

In this section the Associations provide more detailed comments on the proposed amendments in the consultation paper. Item numbers are as they appear in the consultation paper. Not all prompt questions in the consultation paper are addressed. Responses are only provided where substantial further detail, refinement or qualification are required.

1. Safety and notification

1A—Creation of a primary safety condition

The Associations members have the highest commitment to conducting their operations in a safe and responsible manner and meet all structural, operational and worker safety obligations as set out in myriad legislative and regulatory frameworks.

However, the Associations do not support the inclusion of a primary safety condition in the Code as safety is already the purview of other regulatory instruments and is well addressed within them. The Associations are of the view that the current arrangements already provide assurance for the safe and effective implementation of telecommunications infrastructure. If further education or notification of particular site work-place safety requirements is identified, members support this being implemented but note this is a matter for safe work legislation and practice, not deployment regulation.

The Associations further note:

- Members are committed to workplace health and safety and have comprehensive safe work practices and systems in place (e.g. for mobile sites, RadioWorkSafe, www.rfnsa.com.au). For EME safety, members emphasise this is regulated under different legislation and should not be incorporated in any proposed changes in the deployment regulation framework.
- In addition to communications-specific obligations, members comply with relevant Australian Standards, such as AS 4799 *Installation of underground utility services and pipelines within railway boundaries* and AS/NZS 5601.1:2013 *Gas installations General installations, for optical cable installations*.
- Members expect their contractors to comply with all of their own and any reasonable landowner workplace safety requirements at all times.
- Members have obligations under the Act and related codes to minimise environmental disturbance and to make good.
- Where there are particular impacts of deployment operations (e.g. water storage towers) members are happy to engage in discussions to achieve design or operational outcomes to address such concerns.
- The discussion paper appears to direct attention for this issue towards the operations of public utilities, roads, traffic, the use of the land and not interfering with the operation of "essential utilities". The application of this specific intent within the Code or other regulation,

would need significant clarification as it applies specific context to the more general operation of Schedule 3 of the Act. Members also note a growing trend for some State/Territory road and rail authorities to use 'safety' concerns to object to LAAN processes, even where no reasonable safety concern exists or has been addressed. Members note that in many circumstances such safety concerns are dismissed by the TIO, but such objections lead to material delay and cost in processing low impact works. Members support DoITRDC in considering how it can make the system work more efficiently and to focus on real safety issues and not allow safety to become a negotiating tool in commercial disputes.

- The overarching intent of the proposal appears to relate to structural integrity of infrastructure or assets (whether specific to utilities or more generally) and the Associations are of the view that this is more clearly implemented through Proposal D (Requirement to provide engineering certification), see later comments.

1B—Standard notifications across industry

The Associations advise that members support the development of more standard notifications across the industry to assist landholders' engagement with the LAAN process. Development of a standardised or template form of notification would be an acceptable approach to this issue. The Associations further note:

- Members support standard or template notifications in principle, although note there may be some cost to implement a change from existing systems within each organisation and this should not be considered trivial. For example, costs for changes across IT, training and process change may be quite significant. At this stage the Associations' members cannot quantify these costs as we do not know what the change will be, but bear in mind that industry issues 100s of thousands of LAANs per year, and even small changes to the process can result in large cost impacts.
- Members recommend the development and adoption of a standardised or template form of notification be implemented in an industry code developed by the industry and registered by ACMA.
- It should be noted that NBN Co does not support the above position.
- The Associations support the inclusion in a standardised or template form of notification a statement that the facility will be constructed in accordance with recognised construction and other applicable standards. However, the inclusion of a comprehensive list of all possible standards that may apply to a facility would not be practicable in a standardised or template form, rather this information would be provided, on reasonable request by a public utility, for the specific activity which is the subject of the notification.

1C—Withdrawal of notifications

The Associations support the ability to withdraw a notice in principle. Members, other than NBN Co, are of the view that to provide a uniform response across the industry could be included in an industry code developed to deal with the standardised or template form of notification process and other matters related to notification processes raised in this discussion paper. The Associations further note:

- It is important that the obligations imposed by such an industry code do not overly burden or complicate what is essentially a simple matter of notifying that an activity will not proceed.
- If an industry code is determined as the preferred way forward, it should not be prescriptive regarding the provision of detailed reasons for the withdrawal of a notice, or impose restrictive timelines.
- It should be made clear that withdrawal of a notice should only be required where an activity is cancelled. The delay of an activity, whether for a defined or indefinite period, does not require a withdrawal notice and these cases should be communicated directly to the landowner as per usual business practice for operational engagement.

1D—Requirement to provide engineering certification

The Associations note that members design and construct their facilities to meet all applicable building construction and engineering standards, and that it is in their economic and operational interests to do so. The Associations also note the Act already requires any structure to be structurally sound and members are not aware of any significant instances where they have failed to meet their obligations under the Act. If members failed to ensure appropriate structural integrity, they bear the risk of compensation under Section 42 of the Act and are potentially exposed to other general damages claims.

Hence, the Associations believe current regulatory requirements are adequate to address any stakeholder concerns regarding engineering practices. Nonetheless, the Associations would support, in principle, making an industry commitment to the provision of engineering certificates in certain circumstances. The Associations consider the detail and circumstances appropriate for provision of such certification are highly variable and not amenable to codification. Considerations for agreeing to provide engineering certification might include:

- Reasonable grounds for making the request (i.e. there must be some reasonable expectation that the structural integrity of a facility is impacted by the proposed activity).
- Engineering certification post installation should only be required by request, and only under appropriate circumstances (and will not be appropriate in all circumstances, for example for a simple customer cable installation of which there may be thousands every day).
- The Associations note that for their members, in the majority of cases, installations on public utilities occur by commercial agreement with the facility owner and that extensive negotiations and investigations are undertaken to ensure the fitness for purpose of the utility infrastructure to be used. Structural integrity of the utility infrastructure is the onus of the facility owner which is providing the infrastructure under commercial arrangement. Carriers only need to take responsibility for the method and structural integrity of the mounting, for which certification is relatively routine. It would be unreasonable, for example, to expect carriers to provide civil engineering certifications.
- Some utilities/authorities will in any case insist on their own fixings and mounting points. For example, VicRoads do not allow carriers to install conduit mounting points on bridges, but rather VicRoads will, upon request, install mounting points on bridges for conduits. Carriers pay VicRoads for this undertaking and therefore Carriers expect the mounts to be certified by

VicRoads. In this case, certification, review and maintenance of the fixings is not a Carrier's responsibility but is part of the structure owners routine engineering surveys, reviews and maintenance.

- The Associations are of the view that the requirement for engineering certification is highly nuanced and not easily amenable to any general regulatory provision and is not codifiable.
- The Associations note however, there are circumstances where Carriers already have engineering certificates prepared and available for their internal purposes under current operational practices. These certifications could be made available upon request.
- If a broad requirement to provide a wide range of engineering certifications were to be imposed by regulation, cost impacts could be very significant both due to the potentially large number of certifications required and also, in Carriers' experience, that independent consulting engineers are liable to charge a significant premium to provide such certification for the purposes of formal compliance with a regulatory obligation.

1E—Extending notification timelines

The Associations do not support this proposal. Industry has seen no evidence that the current timeframes are inadequate. The Associations are of the view that reasonable notice for LAAN activities are already provided under the current arrangements and in accordance with the nature of the activity to be undertaken. The Associations' members are aware of only a few instances where the LAAN response timeframes have caused concern for landholders and note these are generally confined to larger organisations such as public utilities and road authorities. Therefore, the Associations do not believe this is an issue for general landholders and have significant concerns that operations of the Carriers with general landholders could be significantly impacted by the proposed new timeframes. In particular, the Associations note:

- Extending objection periods to 20 business days (1 month) for all LAAN activities would cause unreasonable delays to customer connections where the proposed activity is relatively insignificant (a large proportion of simple customer connections require LAAN activities on road verges (kerbside pits) for example but do not cause any significant disruption to roadway operations). A period of one month between customer request and a connection would be considered objectionable by our customers.
- 100s of minor LAAN are issued daily without objections or concerns expressed by property owners, so a significant delay could be incurred for little gain.
- Reforms in this area proposed by industry were to reduce uncertainty by setting objection periods starting from receipt of notice rather than a few days before work commencing (which can significantly disrupt long planned and notified works).
- Carriers already have obligations under the Act and various codes to notify, consult and negotiate commercial agreements when deploying low impact facilities. Carriers must also provide local government authorities with assistance in forward planning when requested.
- Our members already use best endeavours to meet these obligations.

Therefore, the Associations strongly support adoption of the non-regulatory alternative to commit to better engagement with landowners rather than an extension of notification timeframes.

2. Objections and Protection

2A—Clarifying the objection process for landowners

The Associations are very supportive of the DoITRDC proposal to develop factsheets about the powers and immunities framework including information about the objections processes. Factsheets could be developed for different audiences, such as landowners, councils and the community, and made available in a variety of ways. Carriers would be happy to include a reference or link to the factsheets in the notice given to the landowner or occupier and agree this could significantly improve landholders' understanding and engagement with the process. Additionally, the standard form of notification or LAAN template suggested under (1B) of this discussion paper could also provide a link to the TIO Public Access Guideline for further clarification of the objection process.

2B—Allowing Carriers to refer objections to the TIO

The Associations are very supportive of the proposal to permit Carriers to refer objections regarding land entry activities directly to the TIO, rather than requiring the landowner or occupier to request the Carrier to make the referral.

The resolution of objections to Carriers regarding land access activities can be time and resource consuming for both the objector and the Carrier. Some objectors will deliberately draw out the process to delay the commencement of work as long as possible so that objections may take months or even years to resolve. Currently, Carriers cannot refer such objections to the TIO directly, even though it may be clear that they will be unable to resolve the complaint with the objector themselves. The only objection pathway for Carriers in this case is to go to the courts to seek an order, which is costly and inefficient.

This amendment will allow Carriers to make such referrals, thereby speeding up the process of resolving disputes, with benefit to objectors, Carriers, and the community (who will receive new services more quickly).

The Associations do not support the TIO proposal to impose a deadline on the time a Carrier may take to refer an objection to the TIO after it has received a request to do so. Carriers are unable to proceed with an activity until the objection is resolved so it is clearly in the Carriers' interests to refer the landholder's objection as soon as possible (and indeed is why the Carriers have requested that they be able to make this referral without the request of the landholder). The Carriers are unaware of any evidence of a systemic occurrence of any such delays so do not see any benefit in additional regulation to address this issue.

In terms of resourcing the TIO, the Associations note that their members fund the TIO resolution system, so they are already motivated to limit the number of objections referred.

2C—Removal of redundant equipment

The Associations are generally supportive of the DoITRDC's proposal to ensure Carriers' redundant equipment is removed where this action is practical, reasonable and economically viable to do so. However, any proposal to codify such a requirement should reflect the nature of the problem being addressed – namely, redundant radiocommunications equipment located on structures. It is important that any obligation to remove redundant equipment is restricted to these circumstances. There are also other important constraints that would need to be considered to ensure the requirement did not impose onerous obligations on Carriers and potentially significantly impact the operations of landholders. It is also strongly agreed that any additional obligations on Carriers to remove redundant equipment from infrastructure or assets be limited to those of public utilities, including road authorities, and local governments.

The Associations note that any definition of redundant equipment, and whether it is reasonable, practical or economic for it to be removed, is subject to a wide range of considerations and circumstances that cannot easily, or comprehensively, be codified in a regulatory document. For this reason, the Associations strongly propose that obligations in regard to redundant equipment be captured in an industry guideline, providing broad examples and scenarios which may readily be updated as new scenarios arise. In whichever form these obligations are imposed, it is imperative that industry have a proper role in developing the appropriate provisions and in their operational implementation.

In addition, the Associations further note:

- Members agree that it is, and should be, the responsibility of the Carrier to remove radiocommunications equipment located on a structure that is no longer in use where an activity has been carried out under Schedule 3 powers.
- This obligation should be limited to removal of radiocommunications equipment located on a structure.
- There should be sufficient exemptions for where removal is impracticable or cost prohibitive, for example removing redundant cabling associated with the radiocommunications equipment where this would require large scale excavation (which is not only costly to the Carrier but disruptive for the landholder).
- That not all equipment currently not in use is actually redundant. Roadside cabinets, antenna mounts, cabling and the like may all have a further use and in particular may be repurposed for future technology upgrades such as 5G.
- Removal should be by request of the landholder only and not a general obligation on the Carrier.
- Where there is a commercial agreement in place with the landholder, any obligation to remove redundant equipment would be devolved to that agreement and not necessarily be subject of obligations arising out of the proposed guideline or any other regulatory instrument.

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

3A— Improve coverage outcomes through better infrastructure, where safe

(i)— Allow antenna protrusions to be extended to a height of 5 meters

The Associations strongly support our previously proposed amendment to increase the maximum protrusion of antennas and mounts above a building or structure from 3m to 5m.

Increasing the height of protrusion above a building or structure allows the provision of additional technologies on the same infrastructure and avoids building new infrastructure imposing additional costs and delays on industry, and visual impact on communities.

The ability to ‘stack’ antennas has become a very significant requirement in the deployment of 5G via the upgrade of existing 4G facilities where 5G is deployed as an additional technology with 4G retained and the two technologies providing increased capacity for the surrounding area. With the smaller physical size of 5G antennas, mounting on a common fixture with 4G facilities provides a significant opportunity to reduce visual impact by eliminating the need for additional headframes or stand alone masts at the same location.

The increase in height can also be an important measure to manage worker safety on roof tops by reducing EME at the rooftop level, thereby reducing access restriction areas on the roof which may impede building operations and maintenance works.

(ii)— Allow satellite dishes of 2.4 meters in diameter to be deployed in industrial and rural areas

The Associations strongly support our previously proposed amendment to increase the permitted size of satellite (and radio) dishes in rural and industrial areas from 1.8m to 2.4m.

Increasing the size of satellite and radio dishes in rural and industrial areas can significantly improve service availability and quality in areas where such services can be marginal. Also, in rural and industrial areas, the impact on amenity of such increases is considered to be very minimal.

(iii)— Specify radiocommunications lens antennae as a new low-impact facility

The Associations strongly support our previously proposed amendment to specify a lens antenna as a new low impact facility.

Lens antennas are used in a similar way to panel antennas (which are already permitted as low impact) but are able to provide more focused coverage and capacity from a single elevation than a standard panel antenna. This is useful when the demand for the facility is coming from a single direction. In this instance, only one lens antenna may be required on a tower, reducing the need to

install multiple panel antennas and thereby increasing the ability to co-locate on other Carriers' towers when there is limited available space on the tower at the height needed to provide good coverage. This could potentially reduce the need for new towers to provide capacity and coverage at a particular location.

3B— Improve coverage outcomes through tower extensions

The Associations strongly support our previously proposed amendment to permit tower height extensions up to 5m in commercial areas as low impact (already permitted in rural and industrial areas).

As for protrusions, tower height extensions permit new technologies and coverage options such as 5G to be provided without the impost of new infrastructure on the community. Tower height extensions can also be an important enabler for co-location (see 3D), which also reduces the need for new infrastructure where carriers may be deploying new network facilities within close proximity of each other.

Industry also believes the community is both now more accepting of mobile network infrastructure and more demanding of the services it provides, changing the balance of the considerations when the LIFD was first drafted. In particular, industry believes there is no justification for a distinction in the treatment of tower height extensions between commercial and industrial areas.

3C— Allowing deployment on poles rather than on utilities

The Associations strongly support our previously proposed amendments to permit the deployment of slim poles or smart poles as low impact where there is no other suitable existing infrastructure. The Associations consider the use of slim poles and smart poles up to a height of 12m provides an appropriate balance between the benefits of the provision of telecommunication services and limiting the impact on visual and other amenity for the surrounding communities.

Such poles would be regarded as low impact provided that they are of a suitably discrete or 'smart' design, either as a feature (for example an art installation) or blending with the surrounding built environment including other utility poles.

This amendment is particularly critical for the future deployment of 5G, which will rely heavily on small cell type deployment. Costs for deployment are a mix of capital investment in the infrastructure and the planning and operational costs of securing planning and tenure arrangements. For small cell and low traffic situations, in, for example a residential area, the costs to provision under a full DA can make the deployment uneconomic for the mobile and wireless network providers. In this case the real cost is to the community in lost economic and social productivity when the service is not deployed in their area. As networks evolve to 5G, the potential benefits to communities flowing from regulatory amendments facilitating widespread deployment include faster enhanced mobile broadband; more advanced applications in a more secure digital environment for business, home and education; massively increased connectivity for the Internet of

Things for industry, commerce and transport; and lower latency, faster responding and mission critical capability for applications such as remote medicine, emergency services and autonomous vehicles.

Slim poles and smart poles being permitted as low impact therefore offer an opportunity to deploy in sensitive areas that would otherwise be prohibitive to provision from a planning and cost/resource perspective – and bring all of these benefits more quickly to the communities they serve.

While particularly advantageous for the deployment of small cells, the Associations do not believe the use of slim poles and smart poles should be limited to this purpose. Fundamentally, if the use of such poles is appropriate for the provision of telecommunication services while limiting visual impact, the precise nature of the use of such poles should not be a matter for this regulation.

Finally, the Associations note the existing prevalence of power and utility poles in many residential, commercial, industrial and rural areas and the broad planning exemptions available to power and other utilities to deploy in these areas without the regulatory burden imposed on Carriers undertaking similar, and just as essential, activities.

3D— Encourage the co-location of facilities

Option 2: Co-location volume lifted to 50 per cent in residential areas, no limit in commercial areas

The Associations strongly support our previously proposed amendment to relax the volume restrictions on co-located facilities in residential areas from 25% to 50% of the original facility and remove the restriction altogether in commercial areas (in line with the existing provisions which already apply in industrial areas).

Co-location of facilities allows new infrastructure and services to be provided to communities without the need to build additional structures or towers, reducing the impact on communities.

As for tower extensions in 3B, noting the greater acceptance by the public of mobile network infrastructure in general, the industry believes there is no justification for a distinction in the treatment of co-located facilities between commercial and industrial areas as proposed in Option 1 of this discussion paper. Therefore, the Associations propose that there should be no volume limit in commercial areas in line with the existing conditions in industrial and rural areas. Within residential areas, the increase in volume proposed will allow the delivery of new and more advanced services while avoiding the need for new infrastructure while still limiting visual impact in these more sensitive areas.

A particular anomaly of the current restrictive volume limitations is that a utility pole mounted solution (for example small cell antenna and equipment cabinet on a light pole) while providing a very good outcome for visual amenity and reduced street clutter, cannot be deployed under low impact as it exceeds the 25% volume limitation. Even though the change in volume is low in

absolute terms, because the initial volume of the utility pole is low, the relative change is apparently large and exceeds the 25% limit. This adds unnecessary costs and delays in additional planning and property processes which can defeat the sensitive economics of the small cell deployment, denying the benefit of the service to the community.

It is acknowledged that any co-location deployment would be required to meet the safety condition and engineering certificate requirements (if adopted) as proposed elsewhere in this discussion paper.

4. Other Matters

In responding to the proposals and questions raised in the DoITRDC's discussion paper, the Associations' members have also considered a number of additional matters related to the Powers and Immunities regime that they believe could significantly benefit the deployment and operation of mobile, wireless and fixed networks. The matters discussed below are presented for early consideration by the DoITRDC and the Associations would welcome the opportunity to further develop these ideas in discussions with the DoITRDC.

However the Associations are also keen to note that these items represent only a select few proposals and make it clear that a more comprehensive review of the Powers and Immunities regime remains the clear objective of the Associations, and which we believe is vital to ensure the timely deployment of future generation networks, including 5G, to the Australian community.

Vegetation clearance for bushfire preparedness

In responding to the Federal Government's Royal Commission into the National Natural Disaster Arrangements, the Associations have previously noted that removing vegetation around asset sites can play a role in the fire-resilience of infrastructure. Service providers reported cases of sites which had an adequate fire break having survived blazes, whereas other sites lacking such protection were damaged. Firefighters and the ADF assisted service providers to improve firebreaks in many locations as fires approached, and this assistance is greatly appreciated by the telecommunications industry.

However, there was some uncertainty at times, as to how much vegetation could be cleared. Additional complexities arose where a network asset is located at the boundary of two properties triggering questions such as what clearance zones, if any, from boundaries are to be observed, which permissions would be required, who is responsible for liaising with property owners etc.

Hence, a common approach to the creation and maintenance of fire breaks at a State/National level may be of value. This might be achievable, for example, through its inclusion as an activity permissible under the LIFD or Chapter 6 of the Code, greatly reducing the administrative overhead uncertainty in undertaking this exercise, and thereby encouraging it to be done more frequently and thoroughly.

The Associations suggest this could be limited to maintenance activity on land identified in a planning instrument as 'bushfire prone'; and where there is a need to mitigate the risk of damage to a facility from a bushfire event.

Electronic Servicing of notices

The Associations note that the Code still requires that notices issued under the Code must be delivered in writing and delivered by regular post. There are also other consequential interpretations concerning when such a notice is considered to have been received upon which the statutory timeframes for delivery of notices, and response timeframes, depend.

With the changes to Australia Post delivery schedules following changes to their regular business practice, as well as additional changes introduced to manage delivery during the COVID-19 crisis, this method of delivery is now well out of step with the nature of the public's expectations for both the form, and timeliness, of the delivery of such notices and associated information. In addition, the timeframes involved can introduce significant delays (easily up to a week or more) compared to the notification timeframe within which the Carriers normally conduct the notification (10 working days) for what can be a quite minor activity (laying a cable for customer connection which may take less than one day). Further, many landowners now require the electronic delivery of notices. Requiring delivery of written material is often difficult in such circumstances. The Code should be updated to reflect modern practices.

The Associations therefore request that the Code be amended to permit electronic delivery of notices issued under the Code.

Extending the benefits of the LIFD

There are numerous facilities throughout Schedules 4 and 5 of the LIFD which are listed as Low Impact Facilities subject to various requirements or constraints. One of the common constraints is that the facility "is, or is to be, part of a national network used, or for use, for the high speed carriage of communications, on a wholesale-only and non-discriminatory basis".

This requirement, which is used multiple times throughout the LIFD, has the effect of limiting the types of facilities that the majority of (non-wholesale) carriers can install as low impact facilities. The Associations understood the original policy intent of these changes was to facilitate the efficient deployment of the NBN. However, there is merit in extending the benefits of the LIFD beyond NBN Co and to all of industry.

Sustainable commercial arrangements for accessing land or property

The Associations recently made a submission to the Department of Finance on the Land Acquisition Act (1989) (Cth) (LAA) review. In that submission, the Associations identified that members invest considerable resources in developing and maintaining infrastructure at many thousands of sites throughout Australia. Mobile and wireless infrastructure at such sites can easily exceed \$1 million in capital works, making our members effectively captive tenants due to the high relocation costs when renegotiating existing leases upon renewal. Additionally, landowners may utilise our members' investments to claim improved value of the land which they advocate must be reflected in rental increases. This can significantly disadvantage our members and may discourage further investment,

particularly in rural and remote areas since annual land rents may exceed the freehold value of the land.

The Associations consider that there needs to be stronger protections in the Telecommunications Act or other legislative frameworks such as the LAA to ensure a right of tenure so that Carriers are able to negotiate reasonable commercial rates since landowners would not have the comfort of knowing that the Carriers' only other remedy was relocation at uneconomic cost.

Local government heritage overlays

The Associations have previously made multiple submissions to the DoITRDC to address an issue arising in interpretation of what constitutes an Area of Environmental Significance (AoES) due to heritage values, thereby excluding such items or places from low impact activities.

The Associations continue to maintain that items or places subject to a local government heritage overlay, but which are not actual heritage items, do not meet the AoES definition in the LIFD. If heritage values genuinely apply, the item, place or thing should specifically qualify for entry on a Commonwealth or state or local register.

The Associations note that some local councils have set aside whole suburbs and precincts as being of heritage significance and hence require a DA to be obtained in those areas regardless of the type of proposal or proximity to heritage items. Deployment of 5G, which will have a high dependence on small cell infrastructure, will increasingly be required in or near established suburbs and historic premises, but would not be permitted under the LIFD if the interpretation that whole areas are excluded as AoES due to the council heritage overlay.

The Associations seek explicit clarification in the LIFD that a local council heritage overlay does not, of itself, constitute any implicit qualification for designation as an AoES. Where there is no material impact on an item, place or thing that is specifically listed in a heritage register made under Commonwealth, state or territory law, the Carriers powers under Schedule 3 and the LIFD should prevail.

Cabling / conduit on or under bridges

The Associations have also made numerous submissions to the DoITRDC seeking clarification in the LIFD that new cable or conduit installed on or under a bridge is permissible as a low impact activity in the same way it would be for installing cable within existing conduits on bridges, currently allowable under Division 4 of Schedule 3 of the Act. It is the Associations view that such installations pose no material impact to the bridge structure, and Carriers would still be required to notify bridge owners about planned activities, comply with the additional statutory obligations under the Code, and meet the operational requirement of bridge owners in undertaking the installation. Bridge owners would still have the opportunity to object to these installations, in accordance with the Act and the Code.

The Associations note that the requirement to seek the approval of road transport agencies for installation of telecommunications conduits on, in or under bridges, gives rise to unnecessary delays

and can impose significant costs on the installation of such infrastructure (by the road authorities in the form of permitting schemes or administration), resulting in delayed and reduced benefits of telecommunications services to the Australian public.

Aerial fibre backhaul cabling

The Associations would also like to explore an additional reform to allow fibre cable to be installed overhead (along poles) as a low impact activity. We think this will be an important option for deploying back haul to small cells in areas where there is no existing ducting. It would also be a significant enabler where terrain (such as rocky ground) or minimising impact on public utilities is an important consideration and potentially a significant cost factor.

The Associations note the ability to deploy aerial fibre is one of the provisions referenced in our earlier item regarding provisions available to national wholesale network providers that we think could be extended to all Carriers (see above, Extending the benefits of the LIFD).

5. Concluding Remarks

In conclusion, the Associations welcome the publication of the DoITRDCs discussion paper “Improving the powers and immunities framework” September 2020 and commend the DoITRDC for its commitment to progressing reform in this critically important area of mobile and wireless communication infrastructure deployment.

While strongly supporting those amendments in Section 3, which we have previously proposed to the Department and consulted on in prior consultation processes, the amendments proposed in Section 1 and 2 of this discussion paper, primarily for the benefit of landholders and public utilities, are of mixed value to the industry. In particular, the Associations members do not support (1A) a primary safety condition or (1E) extended notification timeframes and have significant reservations regarding any regulatory adoption of (1D) engineering certification and (2C) removal of redundant equipment.

Throughout this response to the DoITRDC’s discussion paper, the Associations have made reference to a possible industry code and/or industry guideline for implementing some of the proposals presented. The Associations wish to emphasise that such codes or guidelines must necessarily be high level given the very highly specific nature of the operational detail on which they impact, whether that be for prescribing notification templates, defining redundant equipment or communicating changes in LAAN timeframes. It is imperative that industry lead the development of any such code or guideline as it is the only body with sufficient expertise and knowledge to judge the sensible delineation between prescriptive requirements and general guidance.

The Associations also suggest that much can be achieved by improving engagement and communication with landholders in the LAAN process and industry is willing to commit to further endeavours in this regard, including further guidelines and examples of best practice to supplement the DoITRDC’s own collateral that it has proposed could be developed in (2A) clarifying the objection process.

With the evolution of technology and what it can deliver since some of the reforms were proposed, and the advent of both bushfire emergencies and the current COVID-19 crisis, the importance of connectivity for the Australian community has never been more significant.

Therefore the potential impact of these reforms, whether advantageous to industry or landholders, must be carefully weighed against the very real benefit to the public that arises from any facilitation of network infrastructure deployment, or conversely, the withholding of that benefit to address the uncertain concerns of a finite cross section of stakeholders in relation to specific circumstances where the balance of burden versus benefit for the stakeholder is not clear.

The Associations look forward to continuing to work with the DoITRDC to refine and implement the proposals supported in the discussion paper and would be happy to meet with the DoITRDC to provide any further information or clarification that may be required.