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Submission Response – Improving the telecommunications powers and immunities framework

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Contents

1. CCCLM POSITION	3
General Comments	3
Implications of ‘Low-impact Facilities’ in the 5G Context for Capital City Commercial Districts	5
Current Position.....	5
Striking the Right Balance	5
The Need for National Consistency	6
Primary Concerns with Issues Identified in The Paper.....	6
Recommendations.....	7
Public Authority	7
Carrier Powers and Lopping of Trees	8
2. RESPONSES TO QUESTIONS POSED BY THE PAPER.....	9
1A - Creation of a primary safety condition	9
1B - Standard notifications across industry.....	9
1C - Withdrawal of Notifications.....	9
1D - Requirement to provide engineering certification	10
1E - Extending notification timeframes.....	11
2A - Clarifying the objections process for landowners.....	11
2B - Allowing carriers to refer objections to the TIO	12
2C - Removal of redundant equipment	12
3A - Improve coverage outcomes through better infrastructure, where safe	12
3B - Improve coverage outcomes through tower extensions.....	12
3C - Allowing deployment on poles rather than on utilities	12
3D - Encourage the co-location of facilities.....	13

1. CCCLM POSITION

General Comments

- 1.1 The Council of Capital City Lord Mayors ('**CCCLM**') welcomes the opportunity to make comments on the Department of Infrastructure, Transport, Regional Development and Communications Consultation's Paper on *Improving the Telecommunication Powers and Immunities Framework* ('**Paper**'), which was released on 16 September 2020.
- 1.2 CCCLM's key purpose is to represent the collective views of the capital cities to Federal Government decision makers, and to lobby for and maintain Federal Government interest in capital cities. As one of the most urbanised countries in the world, Australia's capital cities are home to:
- 16.6 million people (more than two thirds of Australia's population); and
 - 8.7 million workers (69% of Australia's workforce).
- 1.3 CCCLM represents generally the Capital Cities of Australia but notes that the City of Perth and ACT Government **are not represented at such time** due to the same currently functioning in Caretaker mode.
- 1.4 CCCLM also wishes to state that the timeframe to make this submission has been very short, and as such, this submission has been unable to properly locate all the relevant information in a coordinated manner from each of the Capital Cities represented. Accordingly, much of this submission is not as details as it might have been if sufficient time was provided.
- 1.5 Nonetheless, CCCLM has been able to consider various issues under advisement from some of the constituent Capital Cities and it is anticipated that those cities will also be making independent submissions.
- 1.6 CCCLM understands the importance of state-of-the-art infrastructure to support and enhance the lives of citizens and Australia's workforce in Capital Cities. The rapid and priority introduction of 5G is critical to the future of Capital Cities and as such, CCCLM supports the implementation of a functional 5G framework which adequately addressed the 'balancing; of interests between carriers and landowners, occupiers and councils.
- 1.7 CCCLM considers it very important that, in light of the far-reaching implications of the proposals in the Paper, CCCLM's input is considered with due regard for the very broad

perspective it provides as representative of Australia's Capital Cities (making up a significant percentage of Australia's Workforce).

1.8 Last year a number of cities independently made submissions (which are considered relevant to this submission) to the House of Representatives Standing Committee on Communications and the Arts' 5G Inquiry. This submission summarises the key issues raised therein and reiterates recommendations which have perhaps been overlooked by the Standing Committee since. It is noted, however, that the Standing Committee made a number of comprehensive recommendations in their report of 30 March 2020 entitled *The Next Gen Future: Inquiry into the deployment, adoption and application of 5G in Australia* ('**Report**').

1.9 The Report in response to the Paper makes the following recommendations:

Recommendation 3

2.169 *The Committee recommends that the Australian Government commence a review of the low impact facilities framework to ensure that its powers to encourage co-location of facilities and equipment are fit-for-purpose in a 5G environment. As part of this process, the Australian Government should begin reviewing carrier arrangements for 5G infrastructure sharing.*

Recommendation 4

2.170 *The Committee recommends that the Department of Communications and the Arts assess the suitability of current powers and immunities arrangements, especially in relation to the timeframes for raising objections, noting the likelihood of an increased number of installations for the deployment of 5G.*

1.10 The Paper references the suggestions to amend the various legislative instruments which allow carriers to deploy telecommunications equipment and infrastructure with a designation of '*low impact*'. These key legislative instruments are summarised below:

- The *Telecommunications Act 1997* (Cth) ('**the Act**');
 - The *Telecommunications Code of Practice 2018* (Cth) ('**Code of Practice**');
 - The *Telecommunications (Low-impact Facilities) Determination 2018* (the '**LIFD**');
 - The *Mobile Phone Base Station Deployment Industry Code (C564:2018)* ('**Industry Code**').
- (Collectively the '**Telco Legislation**')

The Paper stresses the importance that powers afforded to telecommunications carriers by the Telco Legislation are used appropriately and that landowners' interests are protected.

Implications of ‘Low-impact Facilities’ in the 5G Context for Capital City Commercial Districts

- 1.11 The LIFD made under subclause 6(3) of Schedule 3 to the Act describes in some detail low-impact deployments (which form the basis of the carriers’ obligations for deploying mobile base stations and antennas). It is not disputed that, through the introduction of 5G, mobile cell sizes will shrink, resulting in the need for more cell sites. This will be particularly evident in the most densely populated areas like major central business districts of Australia’s Capital Cities (**‘CBDs’**). Three (or more) carriers deploying significantly more cells will certainly add clutter and reduce amenity in the city.
- 1.12 The original LIFD did not foresee this significant density of cells posed by the introduction of 5G, and as such, the **cumulative effect** of many more, smaller cells **must** be now considered. Indeed, the ever-increasing consumer usage of telecommunications services and expectations of higher bandwidth present carriers with a financial incentive to deploy as many small cells as possible, and a 5G evolution (which leverages a higher spectrum in the millimetre frequency bands) may result in cells being deployed as close as 100 metres apart. Such a high concentration of cells within Capital City CBDs will have a significant impact on the amenity of the city users and should be forefront of any deliberations.
- 1.13 The local government authorities of the Capital Cities should be distinguished from the concept of a conventional landowner as referred to in the Telco Legislation, as they must also don significant responsibilities on behalf of their Cities, including, but not limited to, safety (footpath amenity), functionality, liveability (access to open space), promotions, heritage protection, and design (visual amenity).

Current Position

- 1.14 As it currently stands, local governments of the Capital Cities are largely unable to influence the deployment of mobile networks unless there are heritage implications or other special circumstances (e.g. crown land). This must change if CCCLM is to ensure the quality of experience of each of the capital cities which also drive growth and success.

Striking the Right Balance

1.15 CCCLM understands the difficulties presented to carriers by the roll-out of a 5G network, there can be no doubt that regulatory change is crucial for the efficiency in deployment and future operation of such a network. Moreover, regulatory change is essential to ensuring the right balance is struck between this driver of telecommunications innovation and amenity and quality of services. Indeed, this important *balance* is recognised by the Paper.

The Need for National Consistency

1.16 It is noted that metropolitan cities, largely the capital cities of Australian States and Territories and some others, may require different supports and procedures to other targeted areas. Indeed, CCCLM supports the proposition that it cannot be considered that a 'one size fits all' approach would be efficient in light of the considerable difference in the density of sites needed in each major Australian Capital compared to rural or regional areas for example. CCCLM does not consider that a 'nationally consistent' approach is necessary or desirable in the circumstances.

1.17 CCCLM notes that the Framework already works on different levels:

- Facilities are classified as *low-impact* (depending on the specifics of the facility, and also the location of the site, being rural, residential, industrial or commercial);¹
- Exclusionary areas already exist in areas of environmental significance;²
- The Industry Code already promotes distinct approaches for small cells (introduced only in 2018)³ and other low-impact telecommunications equipment, highlighting the difference in consultation etc. required.

Hence the suggested approach need not be seen as revolutionary.

Primary Concerns with Issues Identified in The Paper

1.18 A number of the proposed changes in the Act regarding:

- Increased time frames to consider and respond to notices;
- Improvements to design standards; and
- Addressing redundant assets;

should all be considered to be improvements to the current position.

¹ *Telecommunications (Low-impact Facilities) Determination 2018* (the 'LIFD').

² *Telecommunications Act 1997* (Cth) Schedule 3, clause 2.5.

³ *Mobile Phone Base Station Deployment Industry Code (C564:2018)*

1.19 Section 3C of the Paper, entitled '*Allowing development on poles rather than on utilities*' will no doubt be of concern to the Capital Cities, as it outlines perhaps the most impactful suggestion of the Paper. CCCLM's position in this regard is set out below in paragraphs 2.22 to 2.26.

Recommendations

1.20 CCCLM supports a position that carriers should, to the best standard possible, undertake the rollout of 5G with a whole of precinct approach to its site selection.

1.21 The cumulative effect of multiple so-called low-impact network elements should be considered in determining whether any given individual cell site is in fact 'low-impact' and what the relevant best practice engineering, safety and design guidelines should be for a specific site. Indeed, it must be acknowledged that issues presented for consideration by local government authorities are compounded by each additional site in close proximity.

1.22 Accordingly, CCCLM would require carriers to provide details of their plans for cell deployments to local government agencies on a whole-precinct basis rather than one cell at a time to ensure the cumulative effect of low-impact deployments is considered in totality. Additionally, CCCLM encourages the Department to consider the possibility for:

- Different frameworks for 5G facilities (insofar as consultation with councils and utility providers are addressed in the Industry Code); and
- Different approaches for 5G to capital city CBD areas (with significantly higher density of sites due to increased consumer need and use) and rural / remote areas (such that for utilisation in capital city CBD areas there is established a precinct-wide notification of planned sites generally and consultation to ensure adherence to the Industry Code).

Public Authority

1.23 CCCLM supports any recommendation that references to "public utilities and road authorities" be expanded to include all local government authorities (not just the council as a road authority) as public landowners and managers.

Carrier Powers and Lopping of Trees

1.24 CCCLM understands that the efficacy of the 5G millimetre wave radio spectrum is adversely affected by trees and other physical assets and this adds a critical reason to collaboratively decide on cell heights and locations. Noting that the Act permits the lopping of trees,⁴ CCCLM cannot support this ancillary power which will sacrifice trees in the Capital Cities in favour of network performance.

⁴ *Telecommunications Act 1997* (Cth) Schedule 3, clause 18.

2. RESPONSES TO QUESTIONS POSED BY THE PAPER

- 2.1 CCCLM has identified the prompt questions set out by the Paper and CCCLM's below responses attempt to address these, however, they also address a number of other issues and as such, are not strictly aligned with each corresponding question.

1A - Creation of a primary safety condition

- 2.2 It is considered that the mandated codes and standards do not always fully and properly address other relevant and ancillary safety considerations. Carriers should assume clear and concise responsibility and liability for the assets they install in the roads reserve.

1B - Standard notifications across industry

- 2.3 Generally, a standard LAAN notice would be valuable, particularly including expected timeframes to carry out works. The recommendation includes reference to additional obligations if landowners are public utilities. Consideration should be given to widening this to include local government authorities (LGA) as public land managers. CCCLM also considers that it would be beneficial for carriers to provide additional information where undertaking works on public open space/reserves including details of the equipment to be brought onto the land. Frequently, these works clash with proposed organised community sport within the Capital Cities and other events so the timelines will need to differ for this type of landholding.

- 2.4 Carriers should provide data to sophisticated landowners utilising a standard format that would allow the data (both spatial and attribute) to be uploaded into their systems. The regulations should provide for ongoing notifications to landowners as situations change.

- 2.5 There should also be reference to coordination and co-operation regarding the scheduling and undertaking works to ensure minimal disruption for capital cities.

1C - Withdrawal of Notifications

- 2.6 CCCLM agrees on the importance of formal withdrawal notice – especially where the proposed works are within public open space. Formal withdrawal notices also ensure that carriers are committed to the site.
- 2.7 CCCLM would support a new industry code registered by the ACMA requiring carriers to follow a set procedure to withdraw a LAAN when cancelled or indefinitely delayed.

1D - Requirement to provide engineering certification

2.8 Schedule 3 to the Act outlines a requirement for carriers to comply with industry standards (namely sections 12 and 15 of the Act):

12 Compliance with industry standards

If a carrier engages in an activity covered by Division 2, 3 or 4, the carrier must do so in accordance with any standard that:

- (a) relates to the activity; and
- (b) is recognised by the ACMA as a standard for use in that industry; and
- (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.

15 Conditions specified in a Ministerial Code of Practice

(5) This clause does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.

2.9 The issue is that, from a statutory interpretation perspective, the drafting of these provisions requires that **all** of the conditions in section 12 (paragraphs (a), (b) and (c)) apply. In the context of carriers engaging in those activities, standards recognised by / registered with ACMA are very limited.⁵

2.10 While the Code attempts to replicate conceptually these industry standards and also introduces a concept of best practice, there is an overall lack of clarity and specificity. In the Code 'industry standard' means a standard generally recognised by the Australian telecommunications industry as a standard for use in *the industry*. This fails to recognise that there is an overlap between multiple industries (e.g. electricity (utilities) and road transport safety etc.).

2.11 Additionally, the Code's provisions concerning 'best practice' are inadequate:⁶

Best practice

- (1) In engaging in a land entry activity, a carrier must ensure that the design, planning and installation of facilities (the carrier's facilities) is in accordance with best practice.
- (2) For subsection (1), best practice is conduct of the carrier complying with:
 - (a) an industry code, registered by the ACMA under Part 6 of the Act, applying to the activity; or
 - (b) a standard, made by the ACMA under Part 6 of the Act, applying to the activity.
- (3) However, if there is no code or standard in force for the activity, best practice is conduct regarded by people constructing facilities substantially similar to the carrier's facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.

⁵ ACMA, *Register of telco industry codes and standards*, retrieved from: <https://www.acma.gov.au/register-telco-industry-codes-and-standards>.

⁶ *Telecommunications Code of Practice 2018* (Cth)

2.12 Ultimately, paragraph (3) provides for a concept of 'best practice' which is self-determinative for the telecommunications industry, meaning that what can be considered best practice is essentially regulated by carriers (who are likely the only *people constructing facilities substantially similar to the carrier's facilities*) and as such, does not address the issues outlined above.

1E - Extending notification timeframes

2.13 With a 5G deployment focus and CCCLM's preferred/recommended a whole of precinct consultation process, CCCLM considers that time frames be extended such that: (1) there is a minimum notification period of 10 to 20 business days; and (2) the timeframe to provide a written objection is extended by 5 to 10 business days.

2.14 Additionally, references to "public utilities and road authorities" shall be expanded to include all local government authorities (not just the council as a road authority) as public landowners and managers.

2.15 An increased time frame to respond to a LAAN, (i.e. more than 10 days) would assist, because it is unlikely a proposal will be evaluated by Council in 10 days. At times, LAAN notices may take 10 days to reach the correct officer. If adequate time to evaluate a proposal is given, there is less likelihood of a subsequent LAAN objection as CCCLM will have time to refer for internal stakeholder engagement.

2.16 Currently, it is not an uncommon practice to lodge an objection while a more detailed review is occurring as a risk mitigation strategy, if concerns arise once it has been completely evaluated.

2A - Clarifying the objections process for landowners

2.17 From CCCLM's perspective, any improvements that can be made to the objections process are welcome. The process should be given a longer response time, clear information and schematics on what landowners and occupiers are commenting on. It should not be the responsibility of the landowner to make sense of the application and determine what exactly is being reviewed, and it should also not be the responsibility of the landowner to figure out how objections should be made. Carriers should also be transparent with what kind of equipment is being used in their infrastructure, allowing for councils and landowners to create products that accommodate their needs where

possible. Carriers should seek out equipment that is as small and efficient as possible to allow for variety in the design of poles and other infrastructure.

2B - Allowing carriers to refer objections to the TIO

2.18 With a focus on 5G deployment in CBD areas, CCCLM would have concerns that carriers would have the right to accelerate time frames for a referral to the TIO.

2C - Removal of redundant equipment

2.19 CCCLM strongly supports the introduction of a mandatory requirement for carriers to remove equipment when it becomes redundant. Equipment left on open space is unsightly and the land could be used for alternative use if it was removed. Additionally, above ground cabling on Council assets is unsightly and should be removed if an asset is decommissioned.

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

2.20 While it is considered that there has been insufficient time to thoroughly assess the impact of the proposed changes in this regard, the CCCLM, on behalf of its' constituents, would submit that there needs to be a cohesive, cooperative approach concerning these changes, including consultation with CCCLM and other stakeholders regarding potential impacts in due course.

3B - Improve coverage outcomes through tower extensions

2.21 While it is considered that there has been insufficient time to thoroughly assess the impact of the proposed changes in this regard, the CCCLM, on behalf of its' constituents, would submit that there needs to be a cohesive, cooperative approach concerning these changes, including consultation with CCCLM and other stakeholders regarding potential impacts in due course.

3C - Allowing deployment on poles rather than on utilities

2.22 Introducing the right for carriers to deploy their own assets in the public realm, defeats the utility of the current framework which requires sensible partnership with owners of existing assets (e.g. road authorities and utilities providers).

2.23 Any proposal to designate such assets (including poles up to 12 metres high and 500mm in diameter) as low-impact facilities in all types of areas (including the residential and commercial areas of Australian Capital Cities), is unacceptable. All poles should be

assessed and approved by local authority as they could potentially pose a safety hazard and/or interfere with future planned upgrades of facilities and/or amenity.

2.24 The positioning of poles or facilities (including any ancillary equipment cabinets etc.) on Local Government land should always be subject to the 'approval' of the relevant council. Telecommunications infrastructure which could cause obstructions or interfere with the present and future functionality of the land or facility and may constitute a safety hazard should always be subject to assessment under local planning laws.

2.25 It must be considered that the changes posed by Section 3C of the Paper are problematic for all local government authorities, because:

- They ignore the key findings from the 2019 Standing Committee on Communications and the Arts Inquiry into 5G in Australia;
- They fail to acknowledge or account for the ***cumulative impact*** of small cells under the current definition of '*low-impact*';
- They remove the incentive for new asset sharing and ownership models and take away potential revenue from local government authorities and other public agencies (e.g. road authorities);
- They may result in the deployment of small cell design standards that are inappropriate for a capital city setting, due to cost benefits for carriers to align with a 'national' company design standard rather than a 'city-specific' standard.

2.26 Large metropolitan cities have an abundance of suitable potential infrastructure. Accordingly, this proposed change would undermine CCCLM's position on the 5G framework and potentially jeopardise any future possibility of neutral host networks and increased co-location.

3D - Encourage the co-location of facilities

2.27 CCCLM suggests that a consistent approach to measuring co-location volumes should be established so the same approach is applied by each carrier. Indeed, the promotion of co-location would appear to be consistent with the plans of the Capital Cities, which generally require some form of 'the siting or co-location of facilities to minimise adverse impacts on community wellbeing, visual amenity and the environment'.