

9 April 2021

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

Cc: The Hon Paul Fletcher MP, Minister for Communications

By email: powersandimmunities@communications.gov.au

Dear Ms Blackwood

**Property Council feedback on Tranche 1 proposals:
Amendments to the telecommunications powers and immunities framework**

The Property Council of Australia welcomes the opportunity to comment on reforms proposed within the Tranche 1 phase of *Improving the telecommunications powers and immunities framework* and thanks the Department for their continued engagement and consultative approach.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private. Our members span commercial, retail, industrial, residential and education sectors of the industry.

The property industry enthusiastically shares the Government's objective of "Australians having ready access to high-quality, reliable and affordable telecommunications services" as our members create spaces where people work, play and live and in today's modern world, telecommunication plays a growing role in those activities.

The Property Council and our members have engaged constructively through various rounds of consultation on changes proposed to the Powers and Immunities framework, all the while reiterating the need for more substantial changes to the framework to check the worst behaviour of carriers. The imperious and sometimes aggressive behaviour of carriers in their dealings with building owners sees owners bearing unreasonable health and safety risks and costs on their premises and puts building users at greater risk.

We are disappointed to see the proposals put forward in the current Tranche 1 phase focus on carrier demands without providing sufficient attention or balance to the long held and previously articulated concerns of land and building owners.

The Property Council provided feedback to the initial consultation on these proposals in late 2020 and we resubmit that feedback as we believe the points raised therein are still valid. In addition, we have provided some more detailed comments on aspects of the Tranche 1 proposals in the attached submission.

The Property Council wishes to reiterate our overarching view that more substantial changes to the framework are required to check the worst behaviour of carriers and a stronger commitment

to collaboration with land and building owners must be embedded in the governance of this framework into the future. We seek a response from the Department to the following high-level recommendations made previously:

- 1. Embed a structured process for landowners, carriers and regulators to jointly review any future changes to the Powers and Immunities Framework** – this should be achieved by establishing a formalised, long-term role for the Powers and Immunities Reference Group (PIRG) to review any proposed changes to the framework prior to legislative amendments being consulted on. This should be done in a structured process that encourages collaboration with a requirement for the PIRG to make recommendations that reflect the views of all key stakeholders. The property industry would welcome the chance to work more collaboratively with carriers, but to arrive at that state from the current adversarial approach requires structure and the ability to balance views of the different stakeholders so that the governance of this framework is not inherently one-sided.
- 2. Expand the focus of reform to in-building coverage** – building owners are concerned the new 5G spectrum has less ability to penetrate buildings and uses predominantly licenced spectrum in the hands of three dominant Australian carriers. These issues raise concerns around community expectations and commercial competition and related flow on effects to the industry for in-building coverage (IBC) and consumers. This consultation paper is silent on IBC which involves the installation of a Distributed Antenna System (DAS) and follows a different process and commercial model than macro telecommunications infrastructure. This is a significant omission and should be included in the Department's scope of work moving forward
- 3. Encourage more co-location among carriers through single fibre backbones in buildings** – Building owners would like to see more efficient use of fibre cabling infrastructure within buildings. It would be a vastly better outcome from a cost and efficiency perspective to allow the building owner to install a single large fibre backbone that can be shared by all carriers as opposed to each hauling fibre through a building. At present there are elements of the Act which prevent this but there is no overarching reason why this cannot be done (with the right standards and process in place) saving time and cost for all stakeholders.
- 4. Reform the process regarding compensation for carriers' use of landowners' infrastructure** – fair and equitable financial compensation for the use of landowners' space and infrastructure to house carrier facilities is another omission from this review. The Property Council recommends the next tranche of reform work focuses on the design and inclusion of mechanism within the Act for compulsory compensation to landowners for use of their infrastructure. This review should include participation of the Australian Competition and Consumer Commission (ACCC) and focus on a transparent and equitable process to ensure all parties receive fair compensation.

We would welcome the chance to discuss these recommendations and more detailed feedback in the attached submission with you further. Please do not hesitate to contact Richard Lindsay – Government Relations Manager at rlindsay@propertycouncil.com.au or 0422 022 746 to arrange a meeting.

Yours sincerely,



Frankie Muskovic
National Policy Manager – Sustainability and Regulatory Affairs

Property Council response to Tranche 1 proposals

1. Code of Practice changes

Chapter 1 - Proposal A: Creation of a primary safety condition

Property Council supports the creation of a primary safety condition but this in and of itself does not go far enough to ensure that carriers' contractors and subcontractors deployed to building sites will conduct their work safely or follow existing Work Health and Safety (WHS) requirements.

We do not support the proposal in its current form.

We strongly recommend the adoption of a mandatory, properly enforced code of access administered by the Australian Competition and Consumer Commission (ACCC). We note the existence of the voluntary code ACIF Code G571:2002 *Building access operations and installation* produced by the Communications Alliance that could serve as a useful starting point for such a code, as well as aspects of the *Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*.

Our members' experience of carriers' subcontractors at their buildings demonstrates a disregard for adequate safety practices and an inconsistent approach to site induction and safety procedures, regardless of the existence of G571. A mandatory code is therefore necessary to drive the change needed.

A mandatory access code would provide an operational framework for how carriers access and work on building sites, including requirements for site induction processes, provision of information provided in advance of works, agreed work schedules and requirements for mediation to settle disagreements on commercial arrangements.

Chapter 1 – Proposal C: Withdrawal of notifications

Of the issues associated with Land Access Notices (LAANs), withdrawal or cancellations of activities in isolation is not the primary concern but contributes to the overall resourcing pressure put on building owners to constantly plan and readjust their time and effort to conduct site access tasks and security management (at their own cost) when they mostly derive no income for the use of their property or services. Owners are regularly required to educate and engage with new trades people every time a site visit is performed with no continuity or maintenance of site records.

We previously provided support for Option 1 - an industry commitment to withdraw notices for cancelled or delayed works in a reasonable timeframe. We also questioned why this is not already happening more frequently if there is a willingness to do so.

We would support the changes in the current proposal if the requirement to give written notice is to occur within 5 business days after the proposed activity start date and building owners costs associated with the withdrawn LAAN are reimbursed by the carrier.

Chapter 1 – Proposal D: Engineering Certificate

The Property Council strongly supported a codified requirement for the provision of Design and As-Built documentation to building owners, in accordance with best practice construction documentation, that provides clear documentation of the equipment installed on a site.

We are extremely disappointed to see the current narrow definition of a 'certifiable facility' for which engineering certification would be required, to (it seems) exclude the majority of works conducted inside of a building. This is where there is a most acute need for better documentation to avoid unsafe and poor-quality work from a building owner's perspective.

We do not support the definition in its current form and request it be amended to explicitly include in-building activity such as:

- Line diagrams required for cabling work and drawings showing:
 - any penetrations of firewalls or firestopping materials
 - where cabling is to be routed, fixed and labelled to comply with cabling regulations
- Installation of racks in MDF rooms

Case Study: Unsafe cabling resulting in fire, electrical and WHS safety risks.

A common experience of building owners when inspecting MDF rooms is to find cable runs not fixed in accordance with specific S008/9 requirements or not fixed at all, poor (or absent) fire stopping, termination facilities not fixed correctly and fibre loop clutter potentially a hazard to cablers and services. All these practices represent untenable safety hazards, present risks to future cablers and affect the reliability of the services carried on these cables.



Figure 1: Poor/absent firestopping

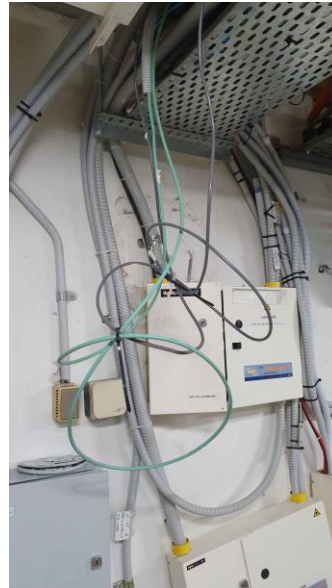


Figure 2: Cabling not fixed properly in MDF room



Figure 3: Incorrect cabling above MDF

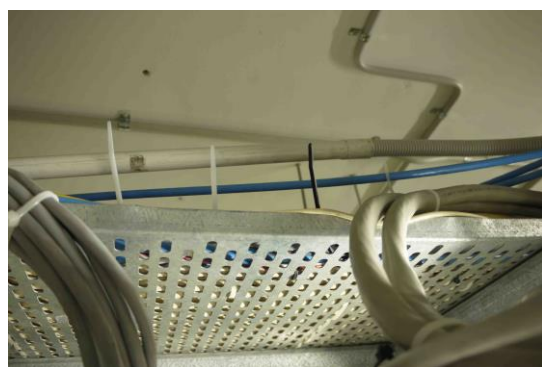


Figure 4: Untied fibre cable above cable tray

We also disagree with the proposed timing requirements for the provision of documentation within 30 days of construction completion – this completely misses the point of having a requirement in the first place. Whilst As-Built documentation should be required for the purposes of maintaining quality site records, design drawings must be provided **before construction begins at the time the LAAN is issued.**

Both Design and As-Built drawings should be provided at the appropriate time and doing so would make an **enormous difference and streamline the time and cost spent by both building owners and carriers in the design, maintenance and decommissioning of carrier equipment within buildings.**

Chapter 2 – Proposal B: Carrier referrals to the TIO

The Property Council supported the earlier proposal to amend the Code of Practice and allow carriers to refer objections directly to the TIO on the condition that more substantial changes be made to the Code of Practice to moderate aggressive and unsafe behaviour of carriers.

We do not see sufficient changes proposed at this stage – including a mandatory code of access and provision of engineering certificates for all in-building works – and therefore do not support this proposal. In its current form, we believe this provision will be exploited by carriers.

The property industry reiterates our preference for a more collaborative approach to dealing with carriers in advance of LAANs which would see objections used as a last resort, rather than TIO referrals or Federal Court action.

We also raise the need to ensure impartiality within the TIO and suggest a review of its governance is conducted in parallel to ensure equal and fair understanding of the issues from both carrier and landowner perspectives.

2. Non-regulatory changes

Chapter 1 – Proposal B: Standard notifications

The Property Council supports this proposal and notes the need to require hard copy notifications as well as notification by email when email is used.

Chapter 2 – Proposal A: Clarifying objections and processes

The property industry would prefer to see a more collaborative approach to dealing with carriers in advance of LAANs which would see objections used as a last resort, rather than TIO referrals or court action.

We have found in consulting with building owners in the past few years that beyond the larger, better resourced commercial building owners, there is generally a very poor understanding on owners' rights and avenues for objections to proposed works by carriers.

We uncovered many instances of commercial building owners or apartment strata bodies having been misled or confused as to the contents of the Act and how it is to be administered. In many cases, owners will give up further pursuit of misunderstandings as it is too difficult and time consuming to deal with. Building owners may choose to focus on their own assets and the myriad other responsibilities to contend with and engage specialist consultants without fully appreciating the complexity of the issues involved.

The Property Council welcomes the provision of plain English guidance and factsheets targeted at different audiences, combined with a requirement for carriers to link to these resources in a LAAN.

3. LIFD changes

Chapter 1 – Proposal D: Engineering certificate

Please see our previous comments under Section 2.

Chapter 3 – Proposal A: Amendments to antennae, dish sizes; new low-impact facility – radiocommunication lens antennae

The Property Council disagrees with this proposal. Antenna protrusions to 5 metres as low impact (currently 3 metres) will have a severe visual impact on buildings and therefore damage the aesthetics of owner assets. The same comment applies to dishes increased to 2.4 metres in diameter. At a minimum, we would expect to see measures including proper concealment, camouflage and shrouding infrastructure should be required.

Further, the suggestion that larger antennas will encourage co-location is false in our members' experience, as the carriers do not share the same antennae. Our understanding is this is not technically feasible as each carrier needs to facilitate the best connectivity to their clients and not to those of their competitors. A lens antenna implies a focused purpose and does not facilitate sharing possibilities.

Chapter 3 – Proposal B: Tower extensions (cumulative max height of 5m; allow in commercial areas)

The Property Council is very concerned and strongly objects to the proposed changes to the LIFD in commercial areas which would see a significant extension of tower protrusions within central business districts. In this setting, the impact of a 2m height extension creates a significant visual impact and we would disagree with the premise of what constitutes a 'low impact' facility in densely populated areas like CBDs.

We strongly disagree with this proposal in its current form and expect at a minimum that measures including proper concealment, camouflage and shrouding infrastructure should be required.

The statement made in the 2020 consultation paper that, "*While there may be some impact to visual amenity from higher structures, the improved coverage and co-location of infrastructure that could result from height extensions means less telecommunications infrastructure—towers and antennae—need to be deployed overall*", is very misleading. As every carrier operates in separate band segments, it means multi antenna locations for each carrier: the bands are totally segregated and require special filters and transmission facilities to operate. **This statement also seems to ignore the implications of the rollout of 5G which will require many more antenna installations due to the lower range and penetration of the higher 5G spectrum.**

In short, the property industry is bracing for an explosion in the amount of infrastructure slated for installation in the coming years which makes proper consideration of how this can be integrated into the fabric of our cities using smart and thoughtful design all the more important.

Chapter 3 – Proposal D: Co-location volume limits increase

The Property Council strongly objects to this proposal in its current form.

As previously stated, it is not appropriate to seek support for lifting co-location volumes without having first articulated a methodology for measuring co-location volume, worked with all stakeholders on proposals for measures that mitigate the adverse impacts of increased co-location volumes, and made the calculation methodology publicly available.

In addition to our previous comments regarding in-building coverage being out of scope, we would also like to raise here the need to see more co-location among carriers themselves.

A good example is the efficient use of fibre cabling infrastructure within buildings. It would be a vastly better outcome from a cost and efficiency perspective to allow the building owner to install a single large fibre backbone that can be shared by all carriers as opposed to each hauling fibre through a building.

Many property owners have invested in fibre for their buildings only to have carriers use the LIFD to install the same technology, bypassing the ability to deliver the tenant service more quickly at a substantially lower cost. This only occurs for fibre but not for CAT3 copper as all MDFs are readily used by all carriers. This practice is neither commercially appropriate or truly competitive and further clutters already full risers and utilises unshared space for more and more termination facilities exclusive to each installing carrier.

At present there are elements of the Act which prevent a single fibre backbone this but there is no overarching reason why this cannot be done (with the right standards and process in place) saving time and cost for all stakeholders.