

1 April 2021

Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601
Australia

Submitted online at: <https://www.communications.gov.au/have-your-say/amendments-telecommunications-carrier-powers-and-immunities-framework-tranche-one>

Dear Director,

Amendments to the telecommunications carrier powers and immunities framework – Tranche One

Thank you for the opportunity to provide further comment on proposed changes to the telecommunications powers and immunities framework. It is encouraging to see the adoption of many proposals which we supported in our previous submission.¹

With technological advances, the legislation and framework need to remain current. New technologies, such as 5G, have the potential to impact a greater variety of landowners. This means the framework needs to be easily accessible and provide certainty to carriers and landowners and the proposed changes can help achieve this.

This letter offers comment on each of the proposed amendments in the draft *Telecommunications Code of Practice 2021* ('the Code of Practice').

Clarification of existing safety conditions

We support the Department's proposal to consolidate duplicate carrier conditions on safety and operations from Chapters 2 to 6 of the Code of Practice to the new Chapter 1A. The current duplication of carrier conditions in the Code of Practice can make it difficult for landowners to understand the conditions required of carriers. The proposed consolidated chapter clearly sets out the safety conditions and is more accessible for landowners, especially for those who are unfamiliar with the telecommunications powers and immunities framework.

Engineering certificates

We support the Department's proposed requirement for carriers to obtain an engineering certificate for 'certifiable facilities'.² Having an engineering certificate will help provide landowners with peace of mind that work will be completed to the appropriate standard. The added requirement that the certificate be provided to landowners within 30 days of the installation is positive and practicable.

¹ [TIO submission to the Department: Improving telecommunications powers and immunities framework \(October 2020\)](#).

² Section 1A7 of the Code of Practice.

However, the requirement that the certificate must be prepared by a suitably qualified engineer is quite broad and could be challenged by landowners. To avoid ambiguity, the requirement could clearly state what makes an engineer 'suitably qualified'. This would ensure the right people are certifying the safety of the works. In our previous submission, we noted the engineering certificate should rely upon an existing reputable standard, such as the Building Code of Australia.³

Withdrawal of notices for cancelled works

We support the Department's proposed requirement for carriers to give written notice to landowners where a proposed activity has been cancelled and the original notice withdrawn.⁴ This would provide certainty to landowners and our complaint handlers about whether a notice is live and which notice a carrier is relying upon.

However, we suggest the Department consider introducing a timeframe for providing this notice. The proposed requirement that notice of withdrawal be given 'as soon as practicable' may be unclear and create unnecessary delays. A suitable requirement could be for carriers to provide the notice:

- within five days of the decision being made to cancel the works; or
- within five days after the work was due to commence.

Referral of matters by carriers to the TIO

The Department's proposal would allow carriers to refer objections to our office if they have made 'reasonable efforts to resolve the matter in good faith'.⁵

We acknowledge the proposed conditional power could lead to a more efficient roll out of new communications technologies. For example, works undertaken to address a mobile black spot will not be held up when there is no chance of negotiation between the carrier and landowner.

However, on the proposed wording of the power, we have two concerns:

- Time may not be saved if referrals are made without genuine consultation. Specifically, if the parties have not shared their submissions and the information they relied upon during consultation. It is likely we will need to collect this after referral to assess the objection. This could delay our assessment of the objection and our decision. Under the current framework, when assessing objections referred to our office, the parties' submissions and information shared during consultation is critical in deciding the objections
- It is not clear what carriers must do to meet the requirement to make reasonable efforts to resolve the matter in good faith, which could lead to unnecessary uncertainty.

In our previous submission, we suggested the Department include a requirement in the Code of Practice for carriers to demonstrate 'reasonable efforts' by providing the following when referring an objection to us:

- a copy of relevant notes or correspondence that demonstrates at least two genuine attempts to address the landowner's concerns about the proposed activity, including providing fulsome responses to reasonable questions; and
- records showing when and how it explained the land access process and the landowner's right to object.

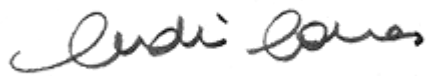
³ <https://hia.com.au/business-information/standards-regulations/building-standards>

⁴ Sections 2.25A, 3.41A, 4.26A and 6.25A of the Code of Practice.

⁵ Sections 2.35A, 4.36A and 6.35A of the Code of Practice.

Otherwise, we support the Department's proposed timeframe in which carriers must refer landowner objections to our office.⁶ The timeframe provides certainty to landowners that their objection will be referred to us within 10 business days of them making the request to the carrier.

Yours sincerely,

A handwritten signature in black ink that reads "Judi Jones". The signature is written in a cursive, flowing style.

Judi Jones
Telecommunications Industry Ombudsman

⁶ Sections 2.35, 4.36 and 6.35 of the Code of Practice.