

Explanatory Statement

Telecommunications Act 1997

Telecommunications (Low-impact Facilities) Amendment Determination 2021

Issued by the Authority of the Minister for Communications, Urban Infrastructure,
Cities and the Arts

Purpose

The purpose of the *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (the Determination) is to improve the operation of the telecommunications deployment framework to assist the rollout of 5G infrastructure and other telecommunications facilities through amendments to the *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD).

The amendments made in the Determination interact with some of the changes to improve the operation of the telecommunications deployment framework made concurrently in the *Telecommunications Code of Practice 2021* (the Code of Practice).

Authority

The Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister) has made the Determination under subclause 6(3) of Schedule 3 of the *Telecommunications Act 1997* (the Act).

Subclause 6(3) of Schedule 3 of the Act allows the Minister to determine, by legislative instrument, that specified facilities are low-impact facilities for the purpose of that clause. Subsection 13(3) of the *Legislation Act 2003* has the effect that this includes the power to determine particular classes of facilities to be low-impact facilities.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make an instrument of a legislative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument. The Determination amends the LIFD.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

Telecommunications carriers have certain legal powers under the Act to inspect land, install certain types of telecommunications facilities, and to maintain all types of telecommunications facilities. It also provides carriers with immunity from a range of state and territory laws when carrying out those activities, such as laws relating to land use, planning, design, construction, siting, tenancy, environmental assessments and protection. These powers and immunities are set out in Schedule 3 of the Act and primarily relate to the installation of low-impact facilities which are specified in the LIFD.

The powers and immunities framework is critical to the efficient deployment and maintenance of telecommunications networks. It minimises the regulatory burden on carriers so they can quickly and cost-effectively meet the community's need for access to affordable, fast and reliable telecommunications services in a nationally consistent way.

Telecommunications services are increasingly essential to how the Australian public, business and government go about daily life. The increasing demand for telecommunications services, and the roll out of new technologies, such as 5G, means an update to the LIFD is needed so the economic and social benefits of new communications technologies can be realised.

The LIFD describes the types of facilities specified as low-impact that can be installed by carriers using the powers and immunities framework.

Amendments made by the Determination

The Determination amends the LIFD to introduce the following new provisions:

- a “certifiable facility” definition within section 1.5;
- a new “certifiable facility” classification at section 3.2 for the purposes of the new “installation certificate” requirement being inserted concurrently into the Code of Practice; and
- a radiocommunications lens antenna as a new type of low-impact facility under Item 13 of Part 1 of the Schedule to the LIFD (the Schedule).

The Determination also amends a number of existing provisions in the LIFD in the following way:

- increase the maximum protrusion length of antennae under Item 4 of Part 1 of the Schedule;
- increase the maximum diameter of a radiocommunications dish under Item 7 of Part 1 of the Schedule;
- amend the current tower extensions conditions to include commercial areas, and to allow a tower to be extended where it has previously been extended by less than 5 metres under Item 12 of Part 1 of the Schedule; and
- increase the maximum co-location volume limit in commercial areas from 25 per cent to 50 per cent at new Item 3 of Part 8 of the Schedule.

Certifiable facilities

When installing low-impact facilities under Schedule 3 of the Act, carriers must comply with the relevant obligations described in the Code of Practice. The LIFD classifies and categorises low-impact facilities that may be installed by carriers using the powers and immunities provided in Schedule 3 of the Act. The Act and the Code of Practice set out the conditions and obligations that carriers must comply with when undertaking these activities.

Despite these existing obligations on carriers, some landowners remain concerned that some facilities are, potentially, not always installed safely or in accordance with applicable conditions and obligations.

Landowners are also concerned they may face additional risk and liability for a poorly installed facility, if that facility causes damage to the landowner's asset or encumbered structure.

To address landowners' concerns, the Code of Practice introduces a new requirement (concurrently with the Determination) for carriers to give installation certificates to landowners to provide certainty that the facility on their property has been installed safely. "Installation certificates" include as built structural compliance certificates, electrical compliance certificates, and any designs or drawings referred to in either document. The new Code of Practice requirement additionally includes qualification requirements for the person or persons preparing installation certificates.

The Determination interacts with this requirement from the Code of Practice by including a new section 3.2 in the LIFD specifying a range of above-ground facilities as "certifiable facilities". The types of above-ground facilities specified in the "certifiable facility" classification are typically of a height, location, design, and/or volume which may cause a landowner to have concerns as to the safety of the installation, such as the structural integrity of the asset or encumbered infrastructure.

A facility in section 3.2 of the LIFD will not be classified as a certifiable facility if it is positioned on the ground, or is attached to a structure owned by the carrier. The exclusion acknowledges that facilities on the ground (such as roadside cabinets) present substantially reduced safety risks in terms of structural integrity, relative to elevated fixtures. Furthermore, landowner concerns of risk and liability could be further mitigated if the facilities are not attached to structures owned by the landowner, and are instead attached to a structure owned by the carrier, such as a tower, pole, or equipment shed.

Radiocommunications facilities

The Australian public's need for access to high quality telecommunications services became readily apparent in 2020 and 2021 in response to the COVID-19 pandemic and the ongoing trend for work, study and social connectivity being undertaken remotely. To help Australians maintain these connections, telecommunications carriers need to install facilities that will extend and support existing coverage footprints and capacity of services. In some cases, this could involve increasing the size of existing or new equipment, or it may involve the installation of smaller equipment in closer density in some locations. While larger equipment may cause some concern about the impact on visual amenity, these facilities can enable increased coverage, provide opportunity for greater co-location amongst carriers, and reduce the need for new standalone facilities to be installed.

The targeted amendments in Part 1 of the Schedule increase the size of some radiocommunications facilities to maximise the benefits of having larger facilities. For example, telecommunications coverage and quality can be greatly improved by increasing the maximum protrusion height of antennae from supporting structures, and by increasing the maximum diameter of radiocommunications dishes.

Increasing the height of antenna protrusions to 5 metres would allow smaller 5G antennas to be installed alongside existing antennae to provide these services, help maximise coverage and eliminate the need for additional antenna mounts.

The ability to install larger satellite dishes would enable rural customers to benefit from improved and cost effective services resulting from the competition that can develop with new market entrants in the LEO-Sat sector.

At the same time, increasing the maximum height of antennae and radiocommunications dishes could potentially reduce visual impact, with fewer larger types of infrastructure to support antennae and radiocommunications dishes needing to be deployed.

Radiocommunications lens antennae are introduced as a new class of low-impact facility, which will provide high-quality and high-range telecommunications coverage to industrial and rural areas. Residential and commercial areas are excluded as areas where this new low-impact facility item may be deployed to preserve visual amenity in dense, urban areas. Radiocommunications lens antennae could be used to extend focussed coverage on specific areas, such as highways, and improve services in rural areas. They may also help improve co-location outcomes due to the reduced number of panel antennae that would otherwise be installed on poles or towers.

Coverage for mobile services is also largely dependent on the ability of carriers to deploy towers of sufficient height. The existing conditions regarding tower extensions in the LIFD for industrial and rural areas have been expanded to include commercial areas, and to allow carriers to extend the height of a tower, even where a previous extension has already occurred. Currently, carriers may only extend the height of a tower where there has been no prior extensions, for a total maximum length of 5 metres. This amendment allows for multiple extensions to occur, so far as those extensions do not exceed a cumulative total of 5 metres. If a local government authority provides development approval to extend the height of a tower, that height extension is not to be included in determining the cumulative maximum length for the purposes of the LIFD. While there may be some concern about the impact on visual amenity from such extensions, allowing tower extensions in commercial areas will have the benefit of increasing coverage in areas where there is a higher density of telecommunications usage and increase opportunities for co-location at existing sites which can mitigate the need for new standalone facilities to be built.

Co-location

The maximum co-location volume limit in commercial areas has been increased from 25 per cent to 50 per cent. The co-location volume limit in residential areas is unchanged and remains at 25 per cent. Allowing greater co-location in commercial areas will improve coverage while reducing the need for carriers to deploy new, standalone facilities.

An explanation of each provision of the Determination is set out in the notes at **Attachment A**.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared to assess the impact that regulatory changes to the telecommunications carriers' powers and immunities framework would have on the telecommunications industry, the landowner sector and consumers. The Office of Best Practice Regulation assessed the Regulation Impact Statement as adequate in meeting the Government's best-practice regulation requirements. The Regulation Impact Statement is available at <https://obpr.pmc.gov.au/> using OBPR ID 42617.

Consultation

In September 2020, the Department of Infrastructure, Transport, Regional Development and Communications released a consultation paper outlining 12 proposed reforms to the framework identified by the Powers and Immunities Reference Group, a group of peak bodies representing carriers, utilities, road authorities, local government and commercial property owners to consider matters related to the operation of the powers and immunities framework, and carriers.

These changes were proposed as part of the Government's commitment to improving the existing framework to get the best out of new networks, including 5G, and to better balance the interests of landowners and carriers.

During the consultation process, the department engaged with peak bodies representing carriers, utilities, local government and commercial building owners about the proposed amendments. The department received 49 submissions in response to the 2020 consultation paper. The majority of submissions preferred changes to the framework to be included in primary or subordinate legislation, rather than in an industry code.

In March 2021, exposure drafts for the LIFD and Code of Practice amendments were released concurrently for public consultation, taking into account stakeholder feedback from the September 2020 consultation process. These exposure drafts included seven of the 12 reforms proposed in the September 2020 consultation process, with the remaining five items to be progressed separately after further policy consideration. During the exposure draft consultation process, the department engaged with peak bodies representing carriers, utilities, local government and commercial building owners about the proposed amendments. The department received 19 submissions in response to the exposure draft.

The 2021 Code and LIFD amendments take into account stakeholder feedback from the March 2021 consultation process.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

Notes to the *Telecommunications (Low-impact Facilities) Amendment Determination 2021*

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (the Determination).

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed online at www.legislation.gov.au.

Section 3 Authority

Section 3 provides that the source of authority for making the Determination is subclause 6(3) of Schedule 3 of the *Telecommunications Act 1997* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 Schedules

Schedule 1 to the Determination outlines the amendments made to the *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD).

Schedule 1 – Amendments

Item 1 Section 1.5, definition of certifiable facility

This item inserts a new definition of “certifiable facility” into section 1.5 of the LIFD by cross-referencing the new definition and clause being inserted concurrently into the *Telecommunications Code of Practice 2021* (the Code of Practice). A certifiable facility is a facility which is described in section 3.2 of the LIFD. A certifiable facility is then subject to section 1A.7 of the Code of Practice, which requires carriers to provide installation certificates to landowners.

Item 2 Section 3.2 (Certifiable Facilities)

This item inserts a new section that describes the Items from the Schedule of the LIFD which are to be classified as certifiable facilities for the purposes of section 1A.7 of the Code of Practice. Subsection 3.2(1) provides that a facility described in column 2 of Items 3 to 8, 12 and 13 of Part 1 to the Schedule are a certifiable facility.

Subsection 3.2(2) specifically excludes from the ‘certifiable facility’ definition facilities that are positioned on the ground, or are attached to facilities owned by the carrier. This caveat was introduced on the grounds that facilities affixed to the ground, or are attached to a facility owned by a carrier, pose a reduced safety risk and liability concern for landowners relative to

circumstances where they are attached at an elevated position, or are attached to a landowner's structure.

Item 3 Schedule (at paragraph (b) of Item 4 of Part 1 – Radio facilities)

This Item amends the maximum protrusion of an antenna from a structure from 3 metres to 5 metres. This amendment aims to improve the size of the coverage area through greater antenna height while minimising the impact on visual amenity.

Item 4 Schedule (at paragraph (a) of Item 7 of Part 1 – Radio facilities)

This Item amends the maximum allowable diameter of a radiocommunications dish from 1.8 metres to 2.4 metres. This amendment aims to improve both coverage and backhaul options for communications services while minimising the impact on visual amenity.

Item 5 Schedule (Items 12 and 13 of Part 1 – Radio facilities)

This Item repeals Item 12 of Part 1 and substitutes it with an analogous Item, having amended Column 3 to include commercial areas, and amends Column 2 to allow for multiple extensions of a tower where all previous extensions have been less than a total of 5 metres. Allowing tower extensions in commercial areas will increase mobile service coverage in areas where there is a higher density of telecommunications usage. The total cumulative height of extensions must still be no more than 5 metres, to minimise visual impact.

This Item also inserts a new Item 13 into Part 1 of the Schedule, which introduces radiocommunications lens antenna as a new type of low-impact facility. This facility type will have a maximum protrusion of 5 metres from a structure, and a maximum volumetric limit of 4 cubic metres. This item must also be colour matched to its background, or in a colour agreed in writing between the carrier and the relevant local government authority. Radiocommunications lens antennae are another option available to carriers to provide high-quality and high-range telecommunications coverage to consumers. To help reduce visual amenity impacts, the deployment of this type of low-impact facility is limited to industrial and rural areas.

Item 6 Schedule (Item 2 of Part 8 – Co-located facilities)

This Item amends Column 3 to remove commercial areas from Item 2 of Part 8 of the Schedule. The item will exclusively apply to residential areas. The current maximum co-location volume of 25 per cent remains unchanged. Commercial areas will be regulated in a separate item, being Item 3 of Part 8.

Item 7 Schedule (Item 3 of Part 8 – Co located facilities)

This Item inserts a new Item 3 into Part 8 of the Schedule to specify a new co-location volume limit for commercial areas. Item 3 of Part 8 contains the same specifications as Item 2 of Part 8, except it applies an increased co-location volume of 50 per cent for commercial areas.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Telecommunications (Low-impact Facilities) Amendment Determination 2021

The *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (the Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

Part 1 of Schedule 3 of the *Telecommunications Act 1997* (the Act) provides authority for telecommunications carriers to inspect, install and maintain low-impact facilities without seeking state, territory or local government planning approval or landowner consent. The *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD) specifies the types of low-impact telecommunications facilities that can be installed under the carrier powers and immunities set out in Schedule 3 of the Act.

The purpose of the Determination is to:

- introduce a new “certifiable facility” classification and definition, cross-referencing amendments to the *Telecommunications Code of Practice 2021* which requires telecommunication carriers to provide landowners with installation certificates after installing certifiable facilities;
- increase the maximum dimensions of antennae and radiocommunications dishes, which are already low-impact facilities listed in the Schedule of the LIFD;
- amend the current conditions for tower extensions to allow for multiple extensions to occur, to the same maximum cumulative limit of 5 metres;
- introduce radiocommunications lens antenna as a new type of low-impact facility; and
- increase co-location volume limits in commercial areas, which allows for multiple telecommunications facilities to be installed on a single item of infrastructure.

The Determination is compatible with the rights and freedoms recognised or declared in the treaties listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

No human rights issues were raised during the consultation undertaken in developing the draft Determination.

Human rights implications

The Determination does not engage any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.