

# Regulatory Impact Statement – Improving the telecommunications powers and immunities framework - Tranche One amendments

October 2021

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## Introduction

This Regulation Impact Statement (RIS) has been prepared by the Department of Infrastructure, Transport, Regional Development and Communications. The purpose of this RIS is to assist the Minister for Communications, Cyber Safety and the Arts, the Hon Paul Fletcher MP(the Minister) to decide whether to implement amendments undertaken as part of the Government’s Tranche One work plan, by making the following legislative instruments:

* the *Telecommunications Code of Practice 2021* (2021 Code), which replaces the existing *Telecommunications Code of Practice 2018* (Code of Practice), and
* the *Telecommunications (Low-impact Facilities) Amendment Determination 2021* (LIFD amendments), which amends the existing *Telecommunications (Low-impact Facilities) Determination 2018* (LIFD).

### Digital Economy Strategy 2030

The Government is committed to Australians having ready access to high-quality, reliable and affordable telecommunications services. Telecommunications services play an important and expanding role in how people in the community go about their daily lives and how businesses operate.

The Government’s [*Digital Economy Strategy 2030*](https://digitaleconomy.pmc.gov.au/) recognises digital infrastructure, including regional connectivity and investments in 5G, as one of the foundations to help grow the digital economy, and also notes the inclusion of funding in the 2021-22 Budget to improve internet and mobile connectivity in peri-urban areas. For the services to be available, infrastructure needs to be installed by telecommunications carriers, including the installation of underground and above ground equipment such as fibre optic cabling, transmitters and antennas for mobile phone base stations.

### Carriers’ powers and immunities framework

Since 1997, laws at the Commonwealth level have allowed telecommunications carriers to deploy equipment classified as ‘low-impact’ in a nationally consistent way. These laws are known as the ‘carriers’ powers and immunities framework’ and are provided for in Schedule 3 to the *Telecommunications Act 1997* (Schedule 3). The framework provides telecommunications carriers with the power to access and inspect land, to install certain types of telecommunications facilities, including ‘low-impact’ facilities, and to maintain facilities. Low-impact facilities are those which are essential to the effective and efficient operation of telecommunications networks to provide services to the public, are of low visual impact, and are unlikely to cause significant community disruption during installation or operation. Some examples of low-impact facilities include pillars used to provide telephone services and antennae used to deliver mobile communications services to the community.

Schedule 3 also provides carriers with immunity from some state and territory laws, such as planning laws, when accessing land and installing telecommunications facilities. Schedule 3 is supported by:

* the LIFD, which specifies facilities as ‘low-impact’ facilities, and
* the Code of Practice, which imposes conditions on carriers in exercising powers under Schedule 3, and includes notification and consultation requirements.

Since 2017, the Government has consulted on a number of proposed changes to the Code of Practice and LIFD. Telecommunications carriers have advocated for changes to improve existing mobile coverage, as well as to facilitate the rollout of mobile networks, including 5G.

At the same time, landowners have emphasised concerns about the safety of telecommunications installations on their assets and land and have consistently sought clarification and expansion of carrier safety obligations.

In September 2020, the Government consulted on 12 proposals to improve the operation of the powers and immunities framework, identified by carriers and landowners. The majority of submissions supported the 12 proposals in different ways. Landowner stakeholders preferred changes to the framework that would result in them being included in primary or subordinate legislation through amendments to the LIFD, the Code of Practice, and Schedule 3, rather than in an industry code. They were less supportive of proposals they considered as giving more, or extended, powers to carriers. Stakeholders from the telecommunications sector preferred changes to the framework that would allow them to deploy more equipment, but were less supportive of proposals that would require them to demonstrate compliance with the existing conditions set out in Schedule 3.

After reviewing stakeholder feedback, the Government agreed to progress consideration of all 12 proposed reforms with further consultation on the detail of the arrangements being completed in two tranches:

* amendments that would be relatively straightforward to implement, and could proceed quickly (Tranche One), and
* amendments requiring further detailed policy consideration (Tranche Two).

In March 2021, the department consulted on proposed Tranche One amendments by releasing exposure drafts of the 2021 Code and LIFD amendments.

This RIS considers the proposals from Tranche One and has been developed in accordance with the Australian Government Guide to Regulation, March 2020, issued by the Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet, and in consultation with the OBPR. Relevant guidance notes issued by the OBPR have also been taken into account.

### Rising mobile phone usage is leading to increased demand for telecommunications services

Australia is a strong adopter of mobile technology, and earned the highest mobile connectivity index score in the 2019 survey conducted by the GSM Association (GSMA). This index considered infrastructure, affordability, consumer readiness, and content and services.[[1]](#footnote-2)

Over time, mobile technology has evolved with significant developments in communication networks. From the first generation of analogue mobile phone networks deployed in the 1980’s, we are now at the beginning of the fifth generation (5G) of mobile technology. Ericsson has forecast that by 2026, 5G networks will carry 53% of the world’s mobile data traffic. Worldwide mobile phone subscriptions are forecast to rise by 28% from 6 billion in 2020 to reach 7.7 billion by 2026.[[2]](#footnote-3)

Long term mobile traffic growth is also driven by an increasing average data volume per subscription, fuelled primarily by more viewing of video content. Video traffic currently accounts for 66 percent of all mobile data traffic, a share that is forecast to increase to 77 percent in 2026.[[3]](#footnote-4)

### 5G requires new or more infrastructure

The rollout of 5G requires a new wave of infrastructure investment the cost of which will largely be absorbed by telecommunications carriers. New or more infrastructure is needed to support 5G in Australia because:

* Some 5G services are expected to use higher frequency ranges, such as in the 26 GHz band, that propagate across shorter distances than lower frequency ranges, such as 1800 MHz and 3.5 GHz, and
* Benefits of 5G technology, such as increased data and reduced latency, can improve connectivity outcomes as more Australians work, study and connect with family and friends from home as a result of the COVID-19 pandemic. The trend for more home-based work and other activities is expected to continue.

To help Australians maintain these connections, telecommunications carriers need to install facilities that will extend and support capacity in existing coverage footprints.

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.

## 1. What is the problem being solved?

The telecommunications industry has advised that, as it commences the deployment of its 5G networks, the powers and immunities framework is critical to the industry’s operating environment. Reform is required to the powers and immunities framework to streamline existing arrangements to facilitate the cost-effective and faster rollout of 5G infrastructure.

The increasing demand for, and reliance upon, telecommunications services means larger infrastructure can help maximise coverage of existing mobile telecommunications networks and provide space for equipment to support the rollout of new technologies, such as 5G. Some inconsistencies in planning arrangements between state and territory governments means the most efficient and effective way for carriers to roll out 5G is through the use of carrier powers and immunities laws as it provides a nationally consistent framework to support deployment.

The 2021 Code and LIFD amendments will assist carriers in their rollout of 5G as well as help realise the economic and social benefits of new communications technologies. At the same time, the deployment of telecommunications infrastructure under the powers and immunities framework is already a sensitive issue. Any changes to the framework that are perceived as allowing carriers to more easily deploy infrastructure without adequate checks and balances is likely to exacerbate the sensitivities of landowners and the community more broadly. Conversely, any reforms to the framework that provides landowners with increased equity are likely to be perceived by carriers as restricting or constraining their operations or adding to their costs and ultimately the prices that consumers of 5G services may experience.

### Industry needs new or more infrastructure

The telecommunications industry has expressed the need for some LIFD items to be updated to allow for larger deployments to maximise coverage, and to include new types of equipment to help facilitate the deployment of new telecommunications technologies, including 5G.

The LIFD is a determination by the Minister specifying types of telecommunications equipment as low-impact that can be installed by carriers using the powers and immunities provided for in Schedule 3.[[4]](#footnote-5) By specifying certain types of equipment as low-impact, carriers can use components that fall within strict type, size, colour and location limitations to minimise the impact of telecommunications infrastructure on the community while expediting the supply of services.

Carriers argue that existing mobile coverage could be improved by amending the LIFD to increase the size of existing equipment, such as tower extensions, antenna protrusions and satellite dishes. Increasing the height of existing equipment can provide space for additional equipment to be installed to co-locate services from multiple carriers or different technologies, such as 5G, at the same sites. Increasing the size of satellite dishes able to be installed as a low-impact facility will enable greater competition in the Low Earth Orbit Satellite (LEO-Sat) sector, meaning that new market entrants can be accommodated.

**Tower extensions** are needed in commercial areas to improve mobile coverage in areas of high density use. The proposed height of the extension would see towers in commercial areas match the limit allowed for tower extensions in industrial and rural areas. While there may be some concern about the impact on visual amenity from such extensions, there are benefits from enabling increased co-location at existing sites and the need for new standalone facilities to be built is reduced.

Higher **antenna protrusions** and larger **satellite dishes** are needed to support stronger signals and increase service reliability, particularly in regional and remote Australia. 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.

Including **radiocommunications lens antennae** asa new antenna type to the LIFD can reduce the number of panel antennae used on a pole or tower. Carriers have put forward in their submissions that benefits of using this type of antenna include improved coverage in industrial and rural areas and greater co-location of services on the pole or tower. A **radiocommunications lens antenna** could be used to extend focussed coverage on specific areas, such as highways, and improve services in rural areas.

Carriers have also requested that current **co-location volume limits** specified in the LIFD for residential and commercial areas be removed to allow for more equipment to be installed on public infrastructure to help improve coverage in these areas. Telstra notes that many small cell equipment solutions have been unable to meet the requirements of the existing 25 per cent limit.

Co-location in the LIFD allows carriers to share their telecommunications infrastructure, or provides for more than one carrier on a site providing the equipment volume is not greater than the 25 per cent limit. Setting appropriate co-location limits requires a fine balance. Strict limits on co‑location can have the perverse effect of resulting in the deployment of more stand‑alone sites, which can increase both visual impact and cost. Conversely, placing no limits on co-location can also lead to visual amenity and safety issues, by over-crowding a single site. The table below outlines existing LIFD limits, and the changes sought by carriers.

Table 1: Comparing existing limits in the LIFD with proposals sought by industry

| **Proposal** | **Existing LIFD limits** | **Proposed change** |
| --- | --- | --- |
| Tower extensions | Extensions up to 5 metres (industrial and rural areas) | Extend to commercial areasAllow cumulative extensions up to 5 metres |
| Increase max height of antenna protrusions | 3 metres  | 5 metres |
| Increase max size of satellite dish | 1.8 metres (industrial and rural areas) | 2.4 metres (industrial and rural areas) |
| Introduce new antenna type in the LIFD - Radiocommunications lens antenna | Not listed | Include as a new type of low‑impact facility |
| Co-location volume limits in residential and commercial areas | Co-location volume limit in residential and commercial areas is 25% | Remove co-location volume limits in their entirety from residential and commercial areas |

### Improved safeguards for landowners

Landowners have emphasised that the safety of telecommunications installations on their assets and land is a key concern, and have consistently sought clarification and expansion of carrier safety obligations.

The powers and immunities framework already includes a number of safeguards for landowners that are demonstrated in the obligations and conditions that carriers are required to adhere to. Carriers have obligations under Schedule 3 to notify affected land owners and occupiers of their intended activities under the framework relating to the installation of ‘low-impact’ facilities and the maintenance of telecommunications facilities. Schedule 3 also imposes a range of conditions on carriers engaging in authorised activities, including a requirement to comply with the conditions in the Code of Practice made by the Minister. The conditions set out in the Code of Practice establish parameters for the way in which carriers undertake their proposed activities.The Code of Practice also includes information about the rights and obligations of landowners who wish to object to a carrier’s proposed activities on their land or asset.

These obligations and conditions are intended to balance the carriers’ need for an efficient and cost‑effective deployment framework against the interests and concerns of landowners. It is also the case that carriers must comply with the occupational health and safety legislation in each state and territory, and that carriers can also be found negligent under common law.

Landowner proposals to address safety concerns and better balance the interests of landowners are set out below.

*Engineering certificate*

A key landowner proposal addressing concerns about the safety of installations requires carriers to provide a post-installation certificate certifying the structural integrity and safety of facilities. Such a certificate would demonstrate carriers’ compliance with existing obligations and conditions set out in Schedule 3 and the Code of Practice.

Landowners are concerned that facilities are not always installed by carriers safely, and without considering the impact on the structural integrity of landowner assets. This creates safety and liability concerns for landowners, including the following:

* The Property Council of Australia expressed concern about unsafe cabling and inadequate fire stopping measures for in-building coverage facilities.
* The Water Services Association of Australia expressed concern that carrier equipment is not always being installed safely on drinking water tanks/reservoirs, and has caused damage to infrastructure (e.g. roof collapses).
* The Queensland Department of Transport and Main Roads pointed to the hazards of over-burdening roadside poles, which can then carry potential electrical risks, structural integrity risks, and represents a significant risk to road users in run-off road crashes.
* The City of Sydney expressed concern about protecting pedestrian movement (positioning of facilities), and stated that the regulatory framework does not adequately consider Council codes and infrastructure standards

Carriers argue they already undertake activities in accordance with carrier licence conditions and can demonstrate evidence of engineering design and construction processes. However, industry is not currently required to demonstrate its compliance with those conditions. Landowners, particularly those from large sectors such as property, local government, roads and other utilities, have asked that they be provided with evidence of industry’s compliance to mitigate the risk that landowners carry for the land or asset to which telecommunications equipment is installed or attached.

*Clarifying safety conditions*

Following consultation, some stakeholders advised that the extensive duplication in the Code can make it difficult and confusing for landowners unfamiliar with the powers and immunities framework to comprehend the conditions placed on carriers.

The Code of Practice is separated into 6 Chapters, with Chapters 2 to 6 each dealing with a specific type of activity. The Code of Practice then duplicates many of the safety and operational conditions across each chapter. These conditions include requiring carriers to engage in activities in accordance with best practice, to comply with industry standards and codes, and to maintain records for certain facilities. Some of these conditions require carriers to take all reasonable steps to cause as little detriment, inconvenience or damage as practicable, to act in accordance with good engineering practice, to protect the safety of persons and property, to interfere as little as practicable with the operations of a public utility, public roads and paths, the movement of traffic and the use of the land, and to protect the environment.

*Depth*

Public utility stakeholders expressed concerns in their feedback to consultation that carriers are not required to record the depth of underground facilities. Requiring carriers to keep such records would be useful in reducing additional costs and unintended damage to those facilities during major infrastructure projects. For example, it would provide useful guidance for those accessing plans about the physical location of underground infrastructure via the Dial Before You Dig service, but would not remove the need for due diligence to be undertaken by landowners.

*Withdrawal of notifications*

Following consultation in September 2020, some landowners advised that the absence of a withdrawal requirement increases their administrative burden by requiring them to continually enquire with a carrier as to the status of a proposed activity. In some cases, landowners incur costs in undertaking their own preparation for the proposed activity on their respective land or asset.

The Code of Practice does not require carriers to inform landowners when a proposed activity has been cancelled. It is understood that some carriers do communicate clearly with landowners about changes to, or cancellation of, proposed activities. However, the absence of such a requirement can create confusion for landowners as to whether a carrier still intends to perform a proposed activity, where clear communication between the parties is not in place. This issue is exacerbated where multiple notices are issued for the same proposed activity.

Including a specific requirement for carriers to notify the landowner when a proposed activity has been cancelled would greatly reduce confusion and administrative burdens for landowners.

## 2. Why is government action needed?

Telecommunications carriers have commenced the rollout of their 5G networks, and it is important for Australia’s economic development that they can do so efficiently. The Government’s [*Digital Economy Strategy 2030*](https://digitaleconomy.pmc.gov.au/) identifies digital infrastructure, including regional connectivity and investments in 5G, as a foundation to help grow the digital economy, and also notes the inclusion of funding in the 2021-22 Budget to improve internet and mobile connectivity in peri-urban areas. The telecommunications industry has advised that the powers and immunities framework is critical to the industry’s operating environment. One of the actions carriers seek from Government is to implement reforms and streamline existing arrangements in the powers and immunities framework to facilitate the timely, cost-effective and efficient rollout of 5G infrastructure. The Government’s 5G strategy, [*5G ‑ Enabling the future economy*](https://www.communications.gov.au/departmental-news/5g-enabling-future-economy)*,* proposed actions to:

* streamline regulatory arrangements to allow carriers to deploy infrastructure more quickly, and
* review existing telecommunications regulatory arrangements to ensure they are fit for purpose.

Carriers can already roll out the types of equipment necessary to deploy their 5G networks either using their powers and immunities, or under State laws. Without the carriers’ powers and immunities framework, and similar State legislation, carriers would only be able to deploy equipment where the applicable landowner has given approval and there is a successful development application (DA). In the case of State Crown land, carriers would need to obtain State development approvals. The need for development approvals means telecommunications deployments undergo a lengthier, more burdensome and expensive process. For example, a development approval process for a mobile phone base station tower can add up to $60,000 to a single deployment.

The table below compares the proposed LIFD changes with the deployments allowed in New South Wales which has one of the more streamlined deployment processes for telecommunications infrastructure in its [*State Environmental Planning Policy (Infrastructure) 2007*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2007-0641#pt.1-note)[[5]](#footnote-6)(SEPPI). This table shows that even where streamlined planning arrangements are in place at the state level, many of the proposed changes to the LIFD that would facilitate the rollout of 5G would require a DA subsequently delaying the deployment of telecommunications services.

Table 2: Comparing limits in the LIFD with NSW planning laws for similar equipment

|  | **Existing LIFD limits** | **Proposed change** | **NSW SEPP\***  |
| --- | --- | --- | --- |
| Tower extensions | Extensions up to 5 metres (industrial and rural areas) | Extend to commercial areasAllow cumulative extensions up to 5 metres | Extensions up to 5m/7.5m only for co‑location purpose, otherwise require DACumulative extensions up to 5 metres: require a DA  |
| Increase max height of antenna protrusions | 3 metres  | 5 metres | Requires DA * Maximum height limit of 3m in residential areas
* Maximum height limit of 5m limit in other areas
 |
| Increase max size of satellite dish | Up to 1.8 metres (industrial and rural areas) | Up to 2.4 metres (industrial and rural areas) | Requires DA * Maximum diameter limit of 1.2m limit in residential areas
* Maximum diameter limit of 1.8m limit in other areas
 |
| Introduce new antenna type in the LIFD - Radiocommunications lens antenna | Not listed | Include as a new type of low-impact facility | Requires DA (not listed as exempt or complying) |

\* The NSW Department of Planning, Industry and Environment is consulting on possible amendments to the NSW SEPP. The NSW SEPP details described in this table are therefore subject to change.

As a result, industry seeks changes through the powers and immunities framework as it provides a more streamlined, cost-effective and nationally consistent deployment process for carriers. In the competitive market, savings are passed on to consumers in the form of lower prices and improved services. However, reforming the powers and immunities framework will be a careful balancing act. It may not be possible to advance substantive reforms to benefit industry without also addressing landowner concerns around the safety of telecommunications installations, improving carriers’ notification processes and compliance with operational obligations.

Alternatives to the Tranche One proposals include:

* *Model guideline*

This option would involve identifying and developing a guideline with the intention of streamlining the deployment process under local government laws that would be agreed and adopted by the various State and Territory Governments. Streamlined planning frameworks have been successfully implemented in New South Wales, and to some extent Victoria. These frameworks acknowledge that, subject to relevant performance criteria, there are certain types of telecommunications facilities outside those defined federally as ‘low-impact’ which do not need to be subject to a full DA process. For example, infrastructure of the type sought by industry in the Tranche One proposals could be categorised as ‘exempt facilities’, which would not be subject to the full DA process and application fee.

This approach would be non-regulatory for the Commonwealth but would require agreement from, and implementation by State and Territory Governments on the overall scope of relevant performance criteria, as well as on the specific types of telecommunications facilities which would come within the ‘exempt’/ ‘other’ category.

Negotiating model agreements tends to be difficult, as it requires finding commonality across the diverse regulatory systems in the federation. A further complication is that, in the absence of trade‑offs from industry, State, Territory and local governments have little incentive to develop such common guidance for the types of infrastructure covered by the Tranche One proposals.

State Governments have delegated powers about planning laws to local governments, including the power to create rules around development approval processes. Local government would need to receive a trade‑off from industry in return for limiting their power in a way that would primarily benefit industry. A possible option could be requiring carriers to provide local governments with greater information and opportunity to have a say about prospective deployment plans. Local governments bear the brunt of community complaints about the visual amenity (size and uniformity of design), density (number of facilities) and heritage impacts of carrier telecommunications infrastructure.

Additionally, a model guideline streamlining the deployment process under local government laws would not directly address landowner concerns about the way carriers undertake activities using their powers and immunities, in the same way as in the Tranche One proposals. However, it is possible that local governments could seek to include changes in the model guideline to better balance landowner interests.

* *Industry Code*

Instead of changes to the Code of Practice, an Industry Code could regulate the matters sought by landowners in the Tranche One proposals. The Property Council of Australia, in its 2020 and 2021 submissions, advocated for a ‘Code of Access’ similar to the *Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*, administered by the Australian Competition and Consumer Commission (ACCC). That Code of Access is a legislative instrument and Schedule 3 does not currently authorise the making of a similar instrument. However, it is possible an Industry Code could be registered under section 117 of the Act with, and enforced by, ACMA (if it meets the requirements of that provision).

The process under section 117 would require some time for the various industry, Telecommunications Industry Ombudsman (TIO) and landowner sector participants involved in the development of the draft Code to reach agreement, as well as to allow for public consultation.

In the case of the Tranche One proposals sought by landowners, there is little incentive for industry to impose restrictions on their members, or further prescribe the way in which they undertake current activities. In practice, this means that industry does not readily recognise that there is a problem with the way in which it uses the powers and immunities provided by Schedule 3 of the Act. It is likely that Government would need to guide and/or facilitate the development of the code in the public interest.

## 3. What options are being considered?

The options considered in this RIS for the items included in the Tranche One work plan are:

* Option 1: Implement changes to improve the operation of the powers and immunities framework for everyone
* Option 2: Implement only those changes that are supported by all stakeholders
* Option 3: Implement only those changes that support the rollout of telecommunications infrastructure
* Option 4: No change.

### Option 1: Implement changes to improve the operation of the powers and immunities framework for everyone

The two stakeholder sectors – landowners and industry – often have competing views when it comes to the deployment of telecommunications infrastructure. For example, landowners are sensitive to the impact of deployments on their respective land or assets, as well as potential community concern about issues such as visual amenity, and will often raise concerns or oppose proposed deployment activities. This leads to costly delays for industry, and frustration from communities who do not receive the benefit of greater coverage or connectivity the proposed deployment would have provided. On the other hand, industry seeks greater efficiency by expanding the existing deployment framework to include larger, or new, equipment so that networks can be rolled out in a nationally consistent and cost-effective way.

A high level summary of the Government’s communications policy objective is to ensure Australians have access to modern communications and the benefits it offers by providing a regulatory environment that enables the efficient rollout of new technology and infrastructure. This objective can be achieved by implementing a full package of 11 proposals that would improve the operation of the existing powers and immunities framework for everyone. It should be noted that this would include implementing proposals that neither landowner nor industry stakeholders fully support. This is the most equitable way that balancing the interests of landowners, including utilities and infrastructure owners, with the interests of industry, can be achieved.

The discussion below outlines the proposals supported by the department, by a formal stakeholder group established by the department called the Powers and Immunities Reference Group (PIRG), and by industry. It also highlights where there has been support, opposition or diverging views about proposals from different sectors.

**Proposal recommended by the department**

The department identified one potential change to assist in improving operational relationships between carriers and landowners.

* The inclusion of a new ‘primary safety condition’ to reinforce and make explicit the existing obligations for carriers to conduct their activities safely.

##### Discussion of proposal

Carriers are subject to a number of existing safety obligations and provisions requiring them to ensure activities undertaken using the powers and immunities provided to them comply with good engineering practice. It is also the case that carriers must comply with the occupational health and safety legislation in each state and territory, and that carriers can also be found negligent under common law.

Nonetheless, there has on occasion been uncertainty from landowners and occupiers about the safety obligations on carriers. Also, previously carriers have not been required to demonstrate their compliance. From the department’s perspective, safety considerations are paramount. Reasonable safety measures, in line with expert advice, should be in place, and other considerations should be secondary.

The Code of Practice already requires a carrier to comply with any standard that:

* relates to the activity
* is recognised by the Australian Communications and Media Authority (ACMA) as a standard for use in that industry, and
* is likely to reduce a risk to the safety of a person if the carrier complies with the standard.

The department proposes a new Part outlining a primary safety condition be added to the Code of Practice to make clear, or reaffirm, that safety is paramount. The proposed primary condition would not be a new regulation but would:

* make more explicit the existing safety obligations carriers must comply with
* apply to other areas of the Code of Practice, such as in agreements between carriers and public utilities regarding inspection, installation and maintenance activities, and
* reinforce the need for carriers to comply with standards, including industry standards.

The department recognises that industry codes could also be used to provide operational guidance and co-ordination for the safe installation of telecommunications facilities on sites or infrastructure managed by utilities and other landowners.

A legislative change would need to be made to the Code of Practice to include the new primary safety condition.

Landowners are supportive of this proposed change, while industry support the status quo. The proposal does not place any additional requirements or burden on industry, but will help landowners better understand the regulatory framework and on that basis, the department supports implementation of the proposal.

**Proposals sought by the Powers and Immunities Reference Group (PIRG)**

The Powers and Immunities Reference Group’s (PIRG) was established by the department in 2018 to help improve the operational relationships between key landowner sectors and industry. Membership of the PIRG includes landowners from prominent industry sectors such as utilities, road authorities, rail authorities, the Australian Local Government Association, and the Property Council of Australia. Carriers are represented by the peak industry bodies Communications Alliance (CA) and the Australian Mobile Telecommunications Association (AMTA).

Landowners are seeking change to how industry engages with them in relation to proposed installation or maintenance activities on their assets or infrastructure, including clarification of existing regulations and formalisation of preferred work behaviours or practices. The reforms identified by landowners were discussed across the 2018 and 2019 period as part of the PIRG.

The following list identifies those broad policy matters where there was some consensus in the PIRG, however the discussions were unable to provide any detail about how the policy matters could be implemented:

* Introduce a template for standard notifications to be used across industry and specify new information for inclusion in the notices, such as the timeframe for the activity to be undertaken within
* Introduce a requirement for carriers to withdraw a notice when the activity proposed in the notice is cancelled or indefinitely delayed
* Introduce a requirement for carriers to provide engineering certification to landowners after an installation or maintenance activity is complete
* Clarify the objections process for landowners through the development of factsheets for different audiences, for example, utilities, local councils and community
* Allow carriers to refer objections about proposed activities to the TIO (currently, objections can only be referred to the TIO at the landowner’s request)

##### Discussion of proposals

*Reforms related to notifications*

Without care, telecommunications deployments can be intrusive. The legislation underpinning the powers and immunities framework already provides for a notification process, whereby carriers are required to give notice to landowners and occupiers before undertaking an inspection, installation or maintenance activity.

Feedback from stakeholders in the PIRG and in the department’s [2020](https://www.communications.gov.au/have-your-say/improving-telecommunications-powers-and-immunities-framework) consultation process is that the information currently provided by carriers can be different in each case, there is no certainty for the landowner or occupier about how long an activity would take, or what standard it is certified to, and that the timeframe to assess the proposed activity, in the case of public utilities and road and rail authorities, is too short.

Discussions led by landowners in the PIRG sought to standardise the information required to be included in a notification by a carrier to help landowners make more effective decisions about the potential impact of the carriers’ proposed activity on their land or operations. It was considered that a **template notification** could reduce the regulatory burden on carriers as it would contain the minimum information required to be provided. As such, the template would not prevent carriers from including additional information that would assist landowners’ consideration of the proposed activity.

However, this approach did not consider the regulatory cost impact on carriers of changing existing administrative practices or of requiring the adoption of a different notice template that may largely require the same information that is already being made available.

It is possible to introduce a template notice for optional use by industry as a non-regulatory reform and not require a legislative change. The template could be made available via the website of either the department or the Australian Communications and Media Authority (ACMA), similar to the way the UK regulator, Ofcom, provides information to industry. Alternatively, the availability of the notice could be managed by an industry representative, such as Communications Alliance. Stakeholders support the department’s proposed non-regulatory approach.

Feedback from stakeholders in the PIRG highlighted the confusion that can be caused in situations where carriers give a new notice to a landowner specifying a similar activity as a previous, or current, notice. This is especially the case in situations where the landowner is unaware that the carrier did not proceed with the proposed activity. The PIRG recommended that carriers be required to **withdraw a notice** when the proposed activity is cancelled or indefinitely delayed to provide transparency and certainty for landowners.

The proposal seeks a behavioural change from carriers that would involve greater interaction and engagement with the landowner. To give effect to the behavioural change, a range of options could be considered from a commitment by industry to include this recommendation in its day to day business practice, through to including a new clause in the Code of Practice. The preferred approach would be informed by consultation outcomes. Industry have questioned the need for this proposal but did not oppose it.

*Engineering certificates*

The powers and immunities framework requires carriers, when undertaking an activity under Schedule 3 of the Act, to do so in accordance with good engineering practice. Consultation with stakeholders, notably public utilities operators, identified concerns that some facilities may not always be installed safely or in accordance with applicable standards and codes.

Landowners also expressed concern that they may face additional risk and liability for a poorly installed facility, if that facility causes damage to the landowner’s structure on which it is installed. While both utilities and carriers have standards with which they must comply, it is the utility that bears primary responsibility for maintenance and safety of the overall infrastructure—electricity pole, water tower or bridge.

The proposal requiring a carrier to provide engineering certificates to landowners following the installation of certain types of low-impact facilities, would:

1. Demonstrate carrier compliance with conditions, and
2. Provide landowners with greater information on what has been installed on their asset or land, where it has been installed, and how has it been installed.

Although the proposal would attract some regulatory cost and burden to the carrier, it is assumed that this cost would not be significant as most of the information needed for a certificate, such as relevant codes and standards, would be identified in the design process undertaken earlier by the carrier for the proposed site. In submissions, industry questioned the need for this proposal arguing it would impose a significant regulatory cost but did not provide supporting evidentiary information for its claim. The department obtained independent engineering advice about the operation and cost impact of the proposal to help inform its recommendation to Government and shared the report with industry. Industry have since provided advice to the department in relation to existing industry practice and costs which the department has considered in its assessment to proceed with the proposal.

*Objections processes*

Schedule 3 of the Telecommunications Act requires carriers to include information about **objections processes** in notices given to landowners and occupiers about proposed inspection, installation or maintenance activities.

Stakeholders in the PIRG identified the need for a greater level of information to be provided regarding landowners’ rights and grounds for objection to a proposed activity. Consistent, accurate information is necessary to facilitate landowners’ rights to natural justice. This view was supported by the TIO in discussion with the department in the lead up to releasing the 2020 consultation paper.

The provision of additional information to landowners and occupiers about the objections process via a factsheet is a non-regulatory reform. Both landowner and industry sectors, as well at the TIO, have shown support for the proposed non-regulatory approach.

The Code of Practice provides that an objection can only be referred to the TIO by a carrier where a landowner or occupier has made a request for the carrier to do so. While the current practice affords natural justice for both landowners and carriers, the timeframes associated with the process can cause delay activities and create subsequent delay costs for carriers. Representatives of the telecommunications industry who participate in the PIRG sought a regulatory change that would **allow carriers to refer objections to the TIO** for resolution without waiting for a landowner to request the objection be referred.

It was noted that referrals would occur in cases where carriers consider it is unlikely to resolve matters directly with the landowner or occupier who are objecting to the proposed activity. The cost to resolve disputes via the TIO are borne by the carrier, regardless of who refers the dispute, so there would remain incentive for carriers to attempt to resolve disputes within the existing objections process. The proposal was supported by both landowner and industry sector members of the PIRG.

A legislative amendment to the Code of Practice would be required to give effect to this recommendation.

**Proposals sought by the telecommunications industry**

Telecommunications carriers sought the following specific regulatory changes to the powers and immunities framework that would reduce ongoing costs and enable more efficient deployment of 5G networks:

* Increase the maximum height of antenna protrusions from 3 metres to 5 metres
* Increase the extension height of towers to up to 5 metres in commercial areas
* Increase the size of satellite dishes from 1.8 to 2.4 metres in diameter in industrial and rural areas
* Remove the volume limit on co-located facilities in residential and commercial areas
* Specify a radiocommunications lens antenna, a new antenna type, as a low-impact facility

##### These proposals are largely those that industry sought in an earlier consultation process undertaken by the former Department of Communications and the Arts in 2017, however the proposals did not proceed at the time. The proposals were included for consultation in the 2020 paper, proposed for implementation in Tranche One and subsequently included in the options outlined in this RIS.

##### Discussion of proposals

Submissions to the [2020](https://www.communications.gov.au/have-your-say/improving-telecommunications-powers-and-immunities-framework) consultation processes on proposed reforms to the powers and immunities framework and to the government’s [5G inquiry](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/5G) in 2020 show there is community concern about the visual impact of increasing amounts of telecommunications equipment deployed to support 5G services. The majority of submissions in the 2020 consultation process from the landowner sector opposed the industry proposals.

However, the industry proposals would, if implemented, substantially improve coverage outcomes for telecommunications services across Australian communities and assist in achieving Government policy objectives related to the 5G rollout and the Digital Economy Strategy. In some cases, the proposed reforms would also go some of the way to addressing community concerns about visual amenity by encouraging greater co-location of equipment on existing infrastructure instead of installing new infrastructure.

The department supports the implementation of industry’s proposals and the social and economic benefits that they bring, and notes that landowner concerns about the safety of installations may be mitigated with the implementation of other proposals, such as the engineering certificate proposal, and limiting the proposed removal of co-location volumes in the following way:

* No change to residential areas
* Increase in co-location volume in commercial areas from 25 to 50 per cent.

Coverage for mobile services, particularly in regional and remote Australia, is largely dependent on the ability of carriers to deploy towers of sufficient height so that coverage can be provided to the whole community.

Increasing the height of existing infrastructure, such as antenna protrusions and towers, and lifting the volume limit on facilities that can be co-located on the same infrastructure, has the benefit of reducing the visual impact because fewer antennae may be needed.

Likewise, larger radiocommunications and satellite dishes can support stronger signals and improve services to a wider range of areas of Australia. Introducing new antenna types, such as a radiocommunications lens antennae, as low-impact facilities would also allow the National Broadband Network and other services to be provided more efficiently in industrial and rural areas of Australia.

Legislative changes to the LIFD would be needed to give effect to these reforms. In most cases, the changes would amend existing items in the Schedule to the LIFD to allow for increased height or volume limits. A new item would be included in the Schedule to the LIFD to specify radiocommunications lens antennae as low-impact facilities in industrial and rural areas. The LIFD is a subordinate instrument and is regularly updated to take into account changes as technology evolves over time.

Table 3: Option 1 – Summary of all proposed policy reforms

|  |
| --- |
| Proposal recommended by the department |
| The inclusion of a new ‘primary safety condition’ to reinforce and make explicit the existing obligations for carriers to conduct their activities safely |
| Proposals sought by the PIRG |
| Introduce a template for standard notifications to be used across industry and specify new information for inclusion in the notices |
| Introduce a requirement for industry to provide engineering certification to landowners after an installation or maintenance activity is complete. |
| Requirement for carriers to withdraw notices when the proposed activity is cancelled or indefinitely delayed |
| Clarifying the objections processes for landowners through the development of fact sheets for different audiences. |
| Allow carriers to refer objections about proposed activities to the Telecommunications Industry Ombudsman (TIO) |
| Proposals sought by the telecommunications industry |
| Increase the maximum height of antenna protrusions from 3 metres to 5 metres |
| Increase the extension height of towers to up to 5 metres in commercial areas |
| Increase the size of satellite dishes from 1.8 to 2.4 metres in diameter in industrial and rural areas |
| Specify a new antenna type, radiocommunications lens antenna, as a low-impact facility |
| Remove the volume limit on co-located facilities in residential and commercial areas |

### Option 2: Implement only those changes supported by all stakeholders

This option would see the package of proposals reduced to five and limited to those where there was some consensus reached by both the landowner and industry members of the PIRG.

The proposals in this option are split between non-regulatory and regulatory reforms that would go some way towards addressing landowner concerns about the safety of telecommunications equipment installations. The majority of proposals are administrative in nature, while the proposal to require engineering certification post-installation of a low-impact facility is operational.

There was minimal support for the proposals sought by industry from the landowner sector, and industry questioned the department’s recommendation to include a primary safety condition as well as the need for a number of proposals suggested by the landowner sector. However, the PIRG’s membership of industry sector groups and peak bodies means that the areas where it identifies some consensus are worth following through.

Table 4: Option 2 – Summary of proposals supported by all stakeholders

| **Proposals sought by the PIRG** |
| --- |
| Introduce a template for standard notifications to be used across industry and specify new information for inclusion in the notices |
| Introduce a requirement for industry to provide engineering certification to landowners after an installation or maintenance activity is complete. |
| Requirement for carriers to withdraw notices when the proposed activity is cancelled or indefinitely delayed |
| Clarifying the objections processes for landowners through the development of fact sheets for different audiences. |
| Allow carriers to refer objections about proposed activities to the Telecommunications Industry Ombudsman (TIO) |

### Option 3: Implement only those changes that support the rollout of telecommunications infrastructure

This option focuses only on the six proposals of greatest benefit for industry and which would meet the Government policy objectives to support the rollout of 5G and the Digital Economy Strategy. The benefits for consumers are better services and coverage, while the benefits for landowners are limited. Implementing this option would not meet the policy objective to balance the interests of landowners and industry.

Table 5: Option 3 – Summary of proposals supporting the rollout of telecommunications infrastructure

| Proposals recommended by industry |
| --- |
| Allow carriers to refer objections about proposed activities to the Telecommunications Industry Ombudsman |
| Increase the maximum height of antenna protrusions from 3 metres to 5 metres |
| Increase the extension height of towers to up to 5 metres in commercial areas |
| Increase the size of satellite dishes from 1.8 to 2.4 metres in diameter in industrial and rural areas |
| Specify a radiocommunications lens antenna, a new antenna type, as a low-impact facility |
| Remove the volume limit on co-located facilities in residential and commercial areas |

The proposals in this option are primarily regulatory in nature, involving potential changes to both the Code of Practice and the LIFD.

### Option 4: No change

This option means none of the proposals would be progressed and the operation of the powers and immunities framework would remain at status quo.

The telecommunications industry has expressed the need for some LIFD items to be updated to allow for larger deployments to maximise coverage, and to include new types of equipment to help facilitate the deployment of new telecommunications technologies, including 5G, and market entrants in the LEO-Sat sector. Under this option, none of these needs would be addressed.

Stakeholders from the landowner sectors have emphasised that the safety of telecommunications installations on their assets and land is a key concern, and have consistently sought clarification and expansion of carrier safety obligations. Under this option, none of these concerns would be addressed.

On balance, implementing this option would not be supported by stakeholders from either the landowner or industry sectors.

## 4. What is the likely net benefit of each option

In this section, the impact analysis will consider the net benefits of the proposals in each of the options and assess each of the options against a set of criteria that will determine if the Government’s broader policy objectives can be delivered.

The broad policy objectives include:

* Digital Economy Strategy - by supporting the growth of the digital economy and getting the best out of new networks, such as 5G.
* 5G Strategy – by streamlining regulatory arrangements to allow carriers to deploy infrastructure more quickly, and reviews those arrangements to make sure they are fit for purpose into the future.
* Communication portfolio objective – better balancing the interests of landowner stakeholders with those of carriers as they seek to roll out 5G infrastructure.

The department assessed the four options against the following assessment criteria:

1. Enable the rollout of digital infrastructure to support the growth of the digital economy
2. Get the best from new networks (e.g. 5G)
3. Streamline regulatory arrangements to allow carriers to deploy infrastructure more quickly.
4. Review existing telecommunications regulatory arrangements to ensure they are fit for purpose.
5. Provide a better balance of landowner interests with those of industry.

Criteria 1 and 2 reflect objectives contained in the Government’s Digital Economy Strategy, and criteria 3 and 4 are objectives outlined in the 5G Strategy. Criteria 5 reflects the communication portfolio objective to provide a better balance of landowner interests with those of industry.

The Department’s assessment of each option against the four criteria can be summarised as follows.

Table 6: Assessment criteria applied to all Options

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Option 1Full package | Option 2PIRG proposals | Option 3Support rollout | Option 4No change |
| 1. Enable the rollout of digital infrastructure to support the growth of the digital economy  | Very Good | Poor | Very Good | Poor |
| 2. Get the best from new networks (e.g. 5G)  | Very Good | Poor | Very Good | Poor |
| 3. Streamline regulatory arrangements to allow carriers to deploy infrastructure more quickly  | Very Good | Fair | Very Good | Poor |
| 4. Review existing telecommunications regulatory arrangements to ensure they are fit for purpose | Very Good | Good | Fair | Poor |
| 5. Provide a better balance of landowner interests with those of industry | Very Good | Good | Poor | Poor |

In assessing the costs and benefits of each option, the department also considered compliance costs and costs to business. Options 1-3 attract compliance costs due to requirements in the powers and immunities framework and applicable industry codes, such as the [*Industry Code for Mobile Base Station Deployment*s](https://www.commsalliance.com.au/Documents/all/codes/c564) to notify landowners, councils and communities about proposed installations. These are existing costs to business and are not expected to increase.

*Compliance costs of industry proposals*

In 2016, AMTA provided information to the department on a “commercial in confidence” basis about the regulatory compliance costs and benefits that the five particular proposals to the powers and immunities framework sought by carriers in 2017 and again in 2020, and set out in Options 1 and 3 of this RIS, would have for the industry and consumers.

AMTA’s 2016 analysis informed its support for the proposals in a consultation paper published by the department in 2017 and the analysis set out in **Appendix A**. AMTA’s 2016 analysis estimated that the implementation of all five proposals considered in the 2017 consultation process would lead to an overall benefit of more than $122 million per year. The analysis considered carriers’ use of the proposed reform for an estimated number of base stations on a yearly basis.

When contacted in 2020 to provide an update to its analysis, AMTA advised that the values in its 2016 analysis were informed by industry at the time but that the detailed calculations to determine the amounts were no longer available without attracting considerable resource cost.

Therefore, this RIS uses the costs provided by AMTA in 2016 for various regulatory activities as a baseline and updates those values using the following assumptions:

* The value attributed to activities and resources from AMTA’s 2016 analysis is increased by 1.76%, in accordance with the average CPI across the period to 2020.
* The site numbers used in AMTA’s 2016 analysis were increased by 25% to account for the increased number of sites established across the period to 2020.

##### **Appendix B** sets out the average CPI, resource cost and site number calculations. **Appendix C** sets out how the site numbers were derived from the Register of Radiocommunications Licences administered by the Australian Communications and Media Authority in accordance with the *Radiocommunications Act 1992*.

*Compliance costs of a new obligation – engineering certificates*

The introduction of a new obligation requiring carriers to demonstrate compliance with an existing condition set out in the powers and immunities framework about good engineering practice has been highlighted as possibly increasing the cost of existing activities for industry. Industry was asked to provide details of these costs and how the proposed requirement would impact existing practices. Industry provided information on 7 October 2021 about this proposal which the department has taken into account (see **Appendix D**).

*Industry – Lost economic benefit to consumers and cost to industry*

On 7 October 2021, AMTA provided the department with analysis outlining the annual costs to industry and the economic benefits to consumers that would be foregone if the regulatory proposals sought by industry were not implemented. Additional direct costs to industry of planning applications and other overheads also form part of the cost analysis (e.g. acquisition of new sites if antenna heights are not able to be increased).

AMTA’s analysis uses a subset of 568 sites out of a total of 3,260 sites that could be rolled out by industry as new low-impact facilities or upgraded using the maintenance powers provided in the powers and immunities framework (see **Appendix A**).

### Net benefit of Option 1: Implement changes to improve the operation of the powers and immunities framework for everyone

This is the option preferred by the Department as it would meet all of the assessment criteria outlined above and realise three policy objectives associated with the reforms. It should be noted that this would include implementing proposals that neither landowner nor industry stakeholders fully support but through consultation and negotiation, have agreed upon. This option is the only one that can deliver all of the economic and social benefits associated with the Government’s policy objectives.

The department’s analysis of the proposals using AMTA’s 2016 analysis as a baseline (after applying the assumptions discussed above) alongside with up to date information about engineering certificate costs, shows the full package of proposals in Option 1 could provide an overall economic benefit, to industry and consumers, of approximately $149 million per year.

Of these overall economic benefits, the telecommunications industry would attract approximately $91.5 million if all proposals from Option 1 was implemented, with the balance of $57.6 million flowing to consumers.

AMTA’s cost-benefit analysis determines that the total benefit that would be lost on an annual basis if the industry proposals did not proceed is approximately $76,029,988 attributed in the following way:

* The lost benefits to consumers on an annual basis if the proposals are not implemented is approximately $67,053,288
* The cost to industry on an annual basis if the proposals are not implemented is approximately $8,976,700

The table below demonstrates the total net benefit of policy reforms in Option 1 using the most up to date information available on the value of activities and resources and site numbers.

Table 7: Total net benefit of Option 1 – Implement changes to improve the operation of the powers and immunities framework

| **Proposed reforms** | **Benefit to Industry** | **Benefit to Consumers** | **Total Benefit** |
| --- | --- | --- | --- |
| Introduce a standard template for notifications including new information to be included  | N/A | N/A | N/A |
| Require carriers to withdraw a notice when the activity proposed in the notice is cancelled  | N/A | ——————  | —————— |
| Require engineering certificates to be provided after the completion of installation or maintenance activities~  | N/A | —————— | —————— |
| Allow carriers to refer objections about proposed activities to the Telecommunications Industry Ombudsman  | —————— | —————— | —————— |
| Increase max height of antenna protrusions | —————— | —————— | —————— |
| Increase max size of satellite dishes | —————— | —————— | —————— |
| Introduce new antenna type in the LIFD – radiocommunications lens antenna | —————— | —————— | —————— |
| Increase max extension height of tower | —————— | —————— | —————— |
| Remove volume limit on co‑located facilities | —————— | —————— | —————— |
| TOTAL BENEFIT | **$91,514,649.45** | **$57,666,436.20** | **$149,181,086.00** |

~ The calculations used to determine the benefit of this proposal takes into account site numbers and an average engineering cost provided by industry to the department in October 2021.

The proposed reforms that generate the maximum benefit for the telecommunications sector are those that improve network coverage and availability to its users. A report by AlphaBeta in 2019 estimated that Australian consumers receive approximately $44 billion a year in economic value from free goods and platforms provided by telecommunications networks. These benefits can only be realised when the infrastructure supporting the services and platforms people use can be deployed or upgraded to meet the expectations of business and the community.

While the proposals nominated by carriers appear to demonstrate that industry would benefit the most, it is also industry that will invest in rolling out equipment to provide services to the community. The section below, Total Regulatory Costs, sets out further detail on the regulatory costs attributed to the proposed regulatory reforms.

### Net benefit of Option 2: Implement only those changes supported by all stakeholders

This is the option preferred by the landowner sector. This option, along with Option 4, is one of the department’s least preferred options. While options that have the support of both sets of stakeholders would usually be a valid option to pursue, in this case, this option does not adequately meet the assessment criteria or realise the Government’s policy objectives for 5G or the digital economy. However, this option would go some way towards providing a better balance for the interests of landowners with those of carriers.

Using the analysis from Option1 above for all of the proposals, it is evident that those proposals supported by the PIRG would attract a net benefit of $13,654,727.40. Of this net benefit, consumers would receive approximately $12.48 million and industry would receive approximately $1.17 million.

The table below outlines the total net benefit of policy reforms in Option 2 using the analysis from the full package of proposals in Option 1.

Table 8: Total net benefit of Option 2 – Implement only those changes supported by all stakeholders

| **Proposed reforms** | **Benefit to Industry** | **Benefit to Consumers** | **Total Benefit** |
| --- | --- | --- | --- |
| Introduce a standard template for notifications including new information to be included  | N/A | N/A | N/A |
| Require carriers to withdraw a notice when the activity proposed in the notice is cancelled  | N/A | —————— | —————— |
| Require engineering certificates to be provided after the completion of installation or maintenance activities~  | N/A |  —————— | —————— |
| Allow carriers to refer objections about proposed activities to the Telecommunications Industry Ombudsman  | —————— | —————— | —————— |
| TOTAL BENEFIT | **$1,174,819.20** | **$12,479,908.20** | **$13,654,727.40** |

### Net benefit Option 3: Implement only those changes that support the rollout of telecommunications infrastructure

This option is preferred by industry. The department also supports this option, but recognises it does not perform as well against the assessment criteria as Option 1 as it would fail to meet the objective to better balance the interests of landowners with those of carriers. For these reasons, the department would recommend implementing Option 1 ahead of this option.

As discussed in option 1 above, the benefits of the proposals sought by industry are shared between industry and consumers. While the bulk of the benefits lean towards industry, it should be noted that industry will re-invest some of the total benefit it receives into the rollout of equipment to provide services to the community.

The table below outlines the total net benefit of policy reforms in Option 3 using the analysis from the full package of proposals in Option 1.

Table 9: Total net benefit of Option 3 – Implement only those changes that support the rollout of telecommunications infrastructure

| **Proposed reforms** | **Benefit to Industry** | **Benefit to Consumers** | **Total Benefit** |
| --- | --- | --- | --- |
| Allow carriers to refer objections about proposed activities to the Telecommunications Industry Ombudsman  | —————— | —————— | —————— |
| Increase max height of antenna protrusions | —————— | —————— | —————— |
| Increase max size of satellite dishes | —————— | —————— | —————— |
| Introduce new antenna type in the LIFD – radiocommunications lens antenna | —————— | —————— | —————— |
| Increase max extension height of tower | —————— | —————— | —————— |
| Remove volume limit on co‑located facilities | —————— | —————— | —————— |
| TOTAL BENEFIT | **$91,514,649.45** | **$46,361,347.20** | **$137,875,997.0** |

###

### Net benefit of Option 4: No change

This is the least preferred option as it fails the assessment criteria on all levels.

In addition to this, AMTA’s cost-benefit analysis determines that the total benefit that would be lost on an annual basis if the industry proposals did not proceed is approximately $76,029,988 attributed in the following way:

* The lost benefits to consumers on an annual basis if the proposals are not implemented is approximately $67,053,288
* The cost to industry on an annual basis if the proposals are not implemented is approximately $8,976,700

However AMTA’s analysis fails to take into account the significant net benefit to industry, also passed on to consumers in the form of improved services and coverage that would be foregone if none of the regulatory proposals are implemented. The analysis at Options 1 and 3 indicate the total benefit to industry of approximately $91.5 million while the implementation of Option 2 would attract a less significant net benefit of approximately $1.1 million.

### Summary of total net benefit by option

The table below details the net benefit for each option.

Table 10: Net benefit analysis of all Options

| **Options** | **Business** | **Consumers** | **Total Benefit** |
| --- | --- | --- | --- |
| Option 1 – Implement all proposals | $91,514,649.45 | $57,666,436.20 | $149,181,086.00 |
| Option 2 – Implement proposals supported by the PIRG | $1,174,819.20 | $12,479,908.20 | $13,654,727.40 |
| Option 3 – Implement proposals supported by industry | $91,514,649.45 | $46,361,347.20 | $137,875,997.00 |
| Option 4 – Do not implement any proposals | *(-$8,976,700.00)* | *(-$67,053,288.00)* | *(-$76,029,988)* |

### Total Regulatory Costs – Telecommunications industry

A number of questions were included in the 2020 consultation paper to elicit information about the types of costs and impact the proposals would have on industry. The information provided by carriers was limited and, even when provided on a commercial in confidence basis, did not sufficiently explain or justify anticipated impacts. Generally, industry did not provide any quantitative cost or impact related information that could be relied upon by Government in its assessment of regulatory impact on industry. The only information provided was qualitative and suggested support or otherwise of industry to the different proposals.

The department has worked with industry from June to October to determine what the anticipated costs and impacts would be for the proposals. Industry provided information via AMTA which was received by the department on 7 October 2021. Industry’s information and analysis of the impact of proposals is a necessary input to the department’s overall cost-benefit analysis of the proposals.

In this section, the impact analysis will consider the estimated total regulatory costs of the proposals in Option 1, as that option includes all of the proposed changes to the framework.

The costs to business occur in the planning of proposed developments, consultation with affected landowners and communities, and potential delays associated with objections either through local government planning processes or with the TIO. There is some overhead attributed to administrative tasks that must also be undertaken when complying with the powers and immunities framework, such as ensuring that notices given to landowners include all necessary, specific information and compliance with conditions of the framework, such as providing engineering certificates to demonstrate good engineering practice.

The table below sets out the total regulatory costs for the telecommunications industry if the proposed reforms in Option 1 are implemented. The proposals are set out in accordance with the relevant Chapter of the 2020 consultation paper.

Table 11: Total regulatory costs of all proposed reforms to industry outlined in Option 1

| **Proposed reform** | **Applicable regulatory costs to industry** | **Estimated cost per site 2020 ($)** | **Total estimated cost**  |
| --- | --- | --- | --- |
| Chapter 1. Safety and notification |
| Proposal ACreation of a primary safety condition | —————— | —————— | $742,848.00 |
| Proposal B Standard notifications across industry (introduce a template notice and specify new information for inclusion) | N/A – non-regulatory proposal | N/A | N/A |
| Proposal C Withdrawal of notifications (for cancelled activities) | —————— | —————— | $17,339 |
| Proposal DRequirement to provide engineering certification | —————— | —————— | $11,287,750.00($11.2m) |
| Chapter 2. Objections and protections |
| Proposal AClarifying objections processes for landowners | N/A – non-regulatory proposal | N/A | N/A |
| Proposal BAllowing carrier to refer objections to the TIO | —————— | —————— |  $28,376.55 |
| Chapter 3. Facilitating services in line with community expectations and to support economic growth |
| Proposal AIncrease max height of antenna protrusions | —————— | —————— | $3,358,050.00($3.4m) |
| Proposal A Increase max size of satellite dishes | —————— | —————— | $2,235,813.75($2.2m) |
| Proposal A Introduce new antenna type in the LIFD– radiocommunications lens antenna | —————— | —————— | $3,504,993.75($3.5m) |
| Proposal BIncrease max extension height of tower | —————— | —————— | $3,358,050.00($3.4m)  |
| Proposal DRemove volume limit on co-located facilities | ——————        | —————— | $3,062,525.36($3.37m) |
| TOTAL REGULATORY COSTS | **$27,595,746.40****($27.6m)** |

~ The calculations used to determine the benefit of this proposal takes into account site numbers and an average engineering cost provided by industry to the department in October 2021.

The table above identifies the regulatory cost for all proposals in Option 1. As Options 2 and 3 are essentially subsets of the proposals in Option 1, the total regulatory costs have been identified as $11,333,465.77 and $15,855,140.30.

The proposal requiring carriers to provide engineering certificates attracts the highest regulatory cost at $11.2 million which makes up most of the regulatory costs in Options 1 to 3. However, of all of the proposals sought by landowner stakeholders this proposal is the key to providing balance. If this proposal was removed from the package, it would likely lead to criticism and risk losing credibility with landowners. If this were to occur, it would limit the Government’s ability to implement longer term reforms in Tranche Two and in turn jeopardise a more efficient rollout of 5G infrastructure.

The total regulatory cost to industry would be 30 percent of the total benefit if the full package of reforms in Option 1 were implemented.

The costs to community organisations and individuals occur in consideration of proposed installation or maintenance activities in local government areas, on property or assets they own or are located adjacent to proposed sites. These costs are generally outweighed by the benefits that efficient, effective and modern telecommunications services brings to business and our communities.

Total Regulatory Costs by Option

The table below details the regulatory costs for each option.

Table 12: Options 1 to 4 – Regulatory burden estimate (RBE)

|  | **Average annual regulatory costs (from business as usual)** |
| --- | --- |
|  | **Change in costs ($ million)** | **Business** | **Community organisations** | **Individuals** | **Total change in costs** |
| Option 1 | $27,595,746.40 | $27,595,746.40 | 0 | 0 | $27,595,746.40 |
| Option 2 | $11,333,465.55  | $11,333,465.55 | 0 | 0 | $11,333,465.55 |
| Option 3 | $15,855,140.30 | $15,855,140.30 | 0 | 0 | $15,855,140.30 |
| Option 4 |  N/A |  N/A |  |  | N/A |

### Total Regulatory Costs – Landowners

A number of questions were included in the 2020 consultation paper to elicit information about the types and extent of costs experienced by landowners and occupiers as a result of carriers exercising the powers and immunities available to them, as well as possible extensions to those powers and immunities from the inclusion of new equipment in the framework.

The department did not receive specific costings from landowners to assist in calculating or assessing the regulatory costs on them. However, landowners and their representative groups expressed a number of concerns about the regulatory impact of the proposals. In the absence of costs to assist with a *quantitative* analysis, we have included *qualitative* analysis below.

In its submission to the 5G inquiry, Queensland’s Department of Transport and Main Roads (TMR) expressed concern about the administrative burden and costs associated with considering technical and safety information of new installations.[[6]](#footnote-7) TMR stated that the **objection process** was its only avenue to prevent an inappropriate installation on a street or traffic light or other road infrastructure. TMR then used the 20 day consultation period that followed their objection to discuss safety, engineering and planning issues with carriers.

The Property Council of Australia pointed to the need to **educate and engage** with new tradespeople about site access requirements and tickets for every site, given carriers’ use of contractors. They also expressed concern that carriers had no continuity or maintenance of site records, and noted the security concerns of commercial clients about technicians accessing facilities without scheduled appointments for routine inspections or to install facilities without considering the impact on their operations or those of their commercial tenants.

Landowners such as TMR and local governments argued they were subject to **project delays** and consequential **increased costs to taxpayers** where their work involved road upgrades or other infrastructure work.[[7]](#footnote-8) This is because carriers are not required to comply with the asset owner's requests to undertake works within set or agreed timeframes and interference with telecommunications infrastructure is a criminal offence. As a result, road and rail authorities, such as TMR, and local governments must negotiate with carriers to move carrier assets located on its land or assets, often at a high cost to TMR and at the timing convenient to carriers.

Victrack and Vicroads expressed concern about carriers’ **withdrawal of notifications**. Victrack and Vicroads pointed to the need to follow up with carriers ahead of the scheduled installations for confirmation, or otherwise, of the proposed activity. They stated projects were regularly 6 months behind schedule.

## 5. Who did you consult and how did you incorporate their feedback?

The department’s analysis of options was informed by responses to public consultation undertaken in 2020 and 2021.

### 2020 - Consultation on 12 proposals

In September 2020, the department released a consultation paper setting out 12 proposed changes to the carrier’s powers and immunities framework identified by both the PIRG and industry.

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 from a diverse range of stakeholders including: carriers and their industry representatives, telecommunications infrastructure providers, commercial property owners, councils and local governments, state government departments, energy, water, and railway utilities, and road authorities.

Submissions from landowners expressed concern that that the existing safety obligations and requirements placed on carriers were not clearly described, and many were left frustrated when interpreting the current framework.

Landowners also strongly requested that more information and documentation be provided by carriers about proposed works to help address concerns about the safety and quality of facility installations. Carriers raised concerns about the administrative and costs burden of the proposed changes to the Code.

The majority of submissions preferred changes to the framework to be included in primary or subordinate legislation rather than in an industry code, with amendments to the LIFD, the *Telecommunications Code of Practice 2018* (the Code of Practice) and Schedule 3 to the *Telecommunications Act 1997* (Schedule 3).

After reviewing stakeholder feedback, the Government agreed to progress consideration of all 12 proposed reforms with further consultation on arrangements being completed in two tranches:

* amendments that would be simple to implement, and could proceed quickly (Tranche One), and
* amendments requiring further detailed policy consideration (Tranche Two).

### 2021 - Consultation on exposure drafts (Tranche One)

In March 2021, exposure drafts of the LIFD and Code amendments were released concurrently for public consultation, taking into account stakeholder feedback from the September 2020 consultation process. Consultation closed on 9 April 2021. These exposure drafts included seven of the 12 reforms proposed in the September 2020 consultation paper, with the remaining four items to be progressed separately after further policy consideration. During the exposure draft consultation process, the department engaged with peak bodies representing carriers, utilities from the energy and water sectors, local government and commercial property owners about the proposed amendments.

The department received 19 submissions in response to the exposure drafts. The majority of submissions focused on of the new proposals - the proposed engineering certificate framework. While landowners supported the proposal, some requested amendments to improve clarity. Carriers were concerned about anticipated regulatory costs, queried the need for an engineer to complete the engineering certificate, and sought to extend the proposed 30‑day timeframe to 90 days.

After considering this feedback, the department made targeted changes to the framework. The department also obtained professional engineering advice to review the engineering certificate framework against carrier concerns. This advice confirmed the framework is operable, has an achievable timeframe, and minimises regulatory impact on carriers as far as possible.

The department met with carriers to explain its changes on 14 July 2021. Carriers raised questions about the anticipated regulatory costs of the engineering certificate framework, and the types of applicable engineers. The department noted that industry had not provided cost or other information in its submissions that would justify change to the proposal.

Industry sought additional time to prepare information about the costs and current industry practice relating to engineering certification for the department’s use. The department received final information from industry on 7 October 2021.

The 2021 Code and LIFD amendments take into account stakeholder feedback from the March 2021 consultation process, the meeting with carriers on 14 July 2021 and the final information provided on 7 October 2021. A summary of stakeholder feedback and the department’s response is provided at **Attachment E**.

## 6. What is the best option from those we have considered?

Option 1 is the preferred option as it will best support the Government’s policy objectives outlined in its[*5G – Enabling the future economy*](https://www.communications.gov.au/departmental-news/5g-enabling-future-economy)strategy and the [*Digital Economy Strategy*](https://digitaleconomy.pmc.gov.au/) to improve mobile coverage and facilitate the rollout of 5G, while ensuring carrier powers are used appropriately and landowner interests are taken into account.

Options 2 and 4 are not aligned with the Government’s objectives and would attract criticism from industry if implemented. While Option 3 favours industry and consumers by improving mobile coverage and aligns with broader Government policy objectives, it does not address the policy objective of balancing landowner interests, particularly around safety concerns. This option may expose the Government to criticism and risk losing credibility with landowners. If this were to occur, it would limit the Government’s ability to implement longer term reforms in Tranche Two and in turn jeopardise a more efficient rollout of 5G infrastructure.

While Option 1 may attract criticism from the community about the visual impact of larger infrastructure, or a greater density of deployment through co-location, this option represents the minimum changes needed to allow carriers to deploy 5G infrastructure quickly and efficiently. At the same time, Option 1 will require compromise from industry, as it includes important safeguards for landowners, notably through the introduction of a new engineering certificate framework. The amendments set out in Option 1 are not intended to solely benefit or burden a single sector — balancing the framework will require compromise from everyone.

The department will recommend to the Minister for Communications, Urban Infrastructure, Cities and the Arts to make the LIFD amendment and the 2021 Code. If the Minister agrees with the department’s recommendation and signs the instruments, the instruments will be forwarded for registering on the Federal Register of Legislative Instruments (FRLI).

The instruments, once made, will be disallowable legislative instruments for the purposes of the *Legislation Act 2003*. This means they will come into effect on the day after registration on the FRLI and be subject to the standard disallowance process. That is, the instruments can be disallowed if Parliament agrees to such a motion within 15 sittings days after the instruments are tabled.

## 7. How will we implement and evaluate the chosen option?

Once registered on the FRLI, the 2021 Code and the LIFD amendments will implement seven of 12 regulatory reforms to the carrier’s powers and immunities framework and finalise Tranche One of the Government’s work plan.

The department will work with ACMA and the TIO to develop the non-regulatory proposals – a draft standard notification template and draft objections factsheet. The department will also consult with industry and members of the PIRG and provide drafts for review.

The department published a new website in September 2021 and new webpages about the carriers’ powers and immunities framework will also be released. The new webpages will include information about the outcomes of consultation, and provide a Q&A section where stakeholders will be able to find information about the changes to the framework.

The department will continue to engage with industry and landowners in the development of Tranche Two proposals for reform to the powers and immunities framework. This process will present opportunities for the department to continue to consult with stakeholders on the operation and effectiveness of Option 1 proposals.

The department will also engage with landowners on additional policy proposals, unrelated to Options 1-4, raised in consultation feedback.

## Appendix A – Australian Mobile Telecommunications Association (AMTA) analysis

This Appendix contained commercial in confidence information, and was removed prior to public release.

## Appendix B - Value of activities and resources

The information in this Appendix contained commercial in confidence information, and was removed prior to public release.

## Appendix C – Site number analysis

The information in this Appendix contained commercial in confidence information, and was removed prior to public release.

## Appendix D – Engineering certificate costs

The information in this Appendix contained commercial in confidence information, and was removed prior to public release.

## Appendix E

Key issues raised by landowners and industry in submissions to the 2021 Exposure Draft consultation, and how the department has addressed those concerns.

| Proposal | Industry concerns | Landowner concerns | Amendments to address |
| --- | --- | --- | --- |
| Withdrawal of notices | N/A | Recommend a specific timeframe apply of 5 days. | Clarify the procedure for withdrawal of notices to require carriers to: specifically describe what activity has been cancelled, include a copy of the original notice, for clarity, and adjust the notification timeframe from ‘as soon as practicable’ to ‘within 5 business days’. |
| New depth requirement | ‘Depth’ changes over time, issue with reliability of records. | ‘Depth’ changes over time, issue with reliability of records | Clarify depth record keeping requirements are at the time of installation of a facility. |
| TIO referral | TIO referral 10-day deadline – sought extension from 10 to 35 days. | Requested objections be referred to the TIO within a fixed timeframe.  | TIO referral deadline kept at 10 days to limit the administrative burden on carriers, while ensuring that objections are referred to the TIO within a fixed timed timeframe. |
|  | Some concern that carriers may routinely refer objections to TIO without genuinely consulting on landowner objections. | The TIO referral provision is conditional on carriers making reasonable efforts to resolve the matter in good faith. |
| LIFD expansion |  | Broad objection to the expansion of the LIFD – visual amenity a key concern |  |
| Engineering certificate framework – requirement (TCP)  | Perceived regulatory cost. |  | Professional engineering advice confirmed the framework minimises regulatory impact on carriers, which is lower than indicated by some carriers, noting also changes to the LIFD list of certifiable facilities (see below).  |
| Concern the 30-day timeframe is too short. |  | Professional engineering advice confirmed 30‑day timeframe is achievable. |
| Certificates shouldn’t require an engineer, rather a ‘suitably qualified person’ may sign a certificate. |  | Professional engineering advice confirmed the certificate should be signed by an engineer.  |
| Clarity on “suitably qualified engineer”.  | Clarity on “suitably qualified engineer”. | Clarify who is an ‘engineer’. |
| Clarify what types of engineer may be required in certifying a facility. |  | Clarified the types of engineer that may be required. |
|  | Requested the certificate confirm the structural integrity of the host structure has not been compromised by telecommunications equipment that may be affixed (i.e. overburdened).  | Require the certificate confirm the facility has not compromised the burdened structure. |
| Requested an option to waive the obligation, on agreement by the landowner and carrier. |  | Allow landowners to waive the obligation, if they have entered into a commercial agreement with the carrier, and that agreement includes engineering assurance processes. |
| Engineering certificate framework – list of certifiable facilities (LIFD) | Sought removal of three types of low-impact facilities (subscriber connection facilities, omnidirectional antennae, and roadside cabinets). |  | Removed subscriber connection facilities (due to their small size) and roadside cabinets (as they are affixed to the ground) based on industry feedback and lack of specific landowner concerns about the structural integrity of these types of facilities.  |
|  | Sought inclusion of all low-impact facilities; others requested the inclusion of underground facilities and in-building coverage. | While these issues are important and will be considered by the department in Tranche Two, these issues are not within the risk profile of the certifiable facilities list. |
|  |  | Extended caveat that certain types of cabinets and solar panels would not be treated as a certifiable facility if the facility was located on the ground or on a carrier’s own infrastructure, to apply to all certifiable facilities. |

1. GSMA, GSMA Mobile Connectivity Index, https: <https://www.mobileconnectivityindex.com/#year=2019&globalRankings=overall&globalRankingsYear=2019> [↑](#footnote-ref-2)
2. Ericsson, *Ericsson Mobility Report*, June 2021, Page 5, <https://www.ericsson.com/en/press-releases/2021/6/ericsson-mobility-report-more-than-half-a-billion-5g-subscriptions-by-the-end-of-2021>. [↑](#footnote-ref-3)
3. Ericsson, *Ericsson Mobility Report*, June 2021, Pages 11-12, <https://www.ericsson.com/en/press-releases/2021/6/ericsson-mobility-report-more-than-half-a-billion-5g-subscriptions-by-the-end-of-2021>. [↑](#footnote-ref-4)
4. 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. [↑](#footnote-ref-5)
5. See Schedule 3A, Part 1 and Part 2. [↑](#footnote-ref-6)
6. Queensland Transport and Main Roads, *Submission 334*, The Next Gen Future: Inquiry into the deployment adoption and application of 5G in Australia, March 2020, p.3, available at <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/5G/Submissions> [↑](#footnote-ref-7)
7. Queensland Transport and Main Roads, *Submission 334*, The Next Gen Future: Inquiry into the deployment adoption and application of 5G in Australia, March 2020, p.3, available at <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/5G/Submissions> [↑](#footnote-ref-8)