

Explanatory Statement

Telecommunications Act 1997

Telecommunications (Low-impact Facilities) Amendment Determination (No. 1) 2025

Issued by the Authority of the Minister for Communications

Purpose

The purpose of the *Telecommunications (Low-impact Facilities) Amendment Determination (No 1) 2025* (the Instrument) is to amend the *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD) to meet increases in consumer demands on telecommunication networks and improve connectivity, while also enhancing the resiliency and energy usage of telecommunications facilities.

Authority

The Minister for Communications (the Minister) is authorised to make the Instrument under subclause 6(3) of Schedule 3 of the *Telecommunications Act 1997* (the Tel Act).

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

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

Background

Australians expect to have access to reliable telecommunications services, much in the same way as they expect access to water and electricity. Connectivity is essential for supporting economic productivity and provides opportunities for all Australians regardless of where they live or work. To ensure these connectivity needs are met, it is often necessary for carriers to deploy new infrastructure.

Telecommunications carriers have powers under Schedule 3 of the Tel Act to inspect land, install ‘low-impact’ facilities, and to maintain any kind of telecommunications facility. In utilising these powers, carriers also have immunity from some state and territory laws, such as planning laws. This is referred to as the carriers’ Powers and Immunities framework. This framework has been in place for over 20 years, and is essential in enabling the efficient construction and maintenance of certain aspects of telecommunications networks in a nationally consistent way.

The Tel Act imposes a range of obligations on carriers in exercising their powers, including a requirement to comply with the conditions set out in the *Telecommunications Code of Practice 2021* (Code of Practice). These obligations and conditions are intended to balance the carriers' need for an efficient and nationally consistent deployment framework against the interests and concerns of landowners. For example:

- Telecommunications carriers are required to notify landowners and occupiers if they are planning to undertake upcoming works. This includes telling landowners and occupiers about plans to install telecommunications infrastructure, as well as the grounds and process for making an objection about the proposed work. A notice should be given to a landowner and occupier at least 10 business days before the carrier starts any activity on the land.
- Landowners and occupiers may object to a proposed activity within certain timeframes. When a landowner or occupier objects, a carrier must make reasonable efforts to consult with the landowner or occupier about the activities. If the landowner or occupier and carrier are unable to resolve the objections, the landowner or occupier can ask the carrier to refer the objection to the Telecommunications Industry Ombudsman (TIO). If the landowner or occupier asks the carrier to refer the objection to the TIO, the carrier must do so.
- When carrying out activities under Schedule 3 of the Tel Act, telecommunications carriers must comply with a number of conditions within that Schedule and the Code of Practice, such as:
 - act in accordance with good engineering practices and interfere as little as possible with the landowners' and occupiers' use of the land,
 - comply with industry standards and codes registered by the Australian Communications and Media authority,
 - give an installation certificate to a landowner and occupier within 60 days of installing specific types of facilities,
 - restore the land to a state similar to its condition before the activity began, and
 - keep and maintain records of certain types of facilities.
- The *Mobile Phone Base Station Deployment Industry Code C564:2020* (Industry Code) sets out notification processes that telecommunications carriers should follow when installing certain low-impact facilities supporting mobile phone networks. The Industry Code is designed to ensure stakeholders are advised before a mobile phone base station is constructed, and that council and community views are taken into account.

Amendments made by the Instrument

In summary, the Instrument amends the LIFD to:

- increase the dimensions of some existing low-impact facilities;
- introduce the installation of cabling on bridges as a low-impact facility in certain circumstances; and

- improve visual amenity of radiocommunications facilities, and encourage co-location of infrastructure.

There are also a number of amendments that are to correct previous drafting errors or to improve clarity in the LIFD.

Increasing the diameter of radio or satellite terminal antenna or dish to connect a subscriber

Amendments to Items 1 and 2, Part 1 of the Schedule in the LIFD are to increase the maximum diameter of a radio or satellite terminal antenna or dish that may be used to provide a subscriber connection in the following ways:

- For residential and commercial areas, increase the existing diameter size of 1.2m to 1.8m; and
- For industrial and rural areas, increase the existing diameter size of 1.8m to 2.4m.

The amendments will help to provide more efficient use of satellite backhaul and access to higher speeds. They also provide better redundancy and energy use outcomes by providing greater resilience in inclement weather and enabling the site to be powered by a lower power transmitter. The changes can also improve connectivity in extremely remote locations.

Extending the maximum length of an omnidirectional antenna or an array of antennae

Extending the maximum length of an omnidirectional antenna or array of antennas can increase the coverage and quality of connectivity, particularly in areas with difficult terrain. At the same time, increasing the maximum size of omnidirectional antennae has the potential to reduce any visual impact, with fewer antennae needing to be deployed to a structure overall. These types of antennae are typically deployed in central locations, such as the centre of a building rooftop or on top of an existing tower or pole, to maximise the coverage area.

The change also enables the deployment of omnidirectional antenna intended to support point-to-multipoint base stations for communications via mobile radio, such as by police and other emergency services, including rural fire services.

Deploying radiocommunications equipment without a cabinet

Item 8, Part 1 of the Schedule has been amended to allow carriers to install radiocommunications facilities without a cabinet. These facilities are commonly referred to as ‘small cells’. The previous drafting in Item 8 meant that carriers were required to install a radiocommunications facility with a cabinet.

Improvements in radiocommunications facilities design and technology now means that facilities used by some carriers no longer require an external cabinet or adjacent equipment shelter to provide mobile telecommunications services to customers. This has resulted in better visual and deployment outcomes as radiocommunications facilities can be deployed more discreetly while still delivering on coverage and quality objectives.

Radiocommunications dishes

The amendments include a new Item 7A in Part 1 of the Schedule to increase the maximum size of radiocommunications dishes that applies to rural areas. The change means that radiocommunications dishes can be up to 3.8 metres in diameter, and if attached to a structure, the protrusion is to be no greater than 2 metres.

Increasing the size of an equipment shelter

The Instrument inserts a new Item 4A in Part 3 of the Schedule that would enable larger equipment shelters to be constructed in industrial and rural areas. The maximum dimensions for equipment shelters in industrial and rural areas is proposed to increase from a maximum base area of 5m² and maximum height of 2.5m to a maximum base area of 52m² and maximum height of 5m.

The insertion of a new item allows for larger equipment shelters to house telecommunications equipment, such as temporary telecommunications facilities, batteries or air conditioning equipment. The new item is intended to help improve connectivity and resiliency of telecommunications networks.

Increasing the size of solar panel arrays – rural areas

The Instrument amends the existing Item 7 of Part 3 of the Schedule to allow solar panels with a base area of 50m² to be installed in rural areas.

The purpose of the amendment is to improve the energy efficiency of telecommunications facilities and also their resiliency during emergencies and natural disasters. There can be delays in telecommunications facilities becoming operational due to delays in telecommunications facilities being connected to electricity networks. Additionally, the most common cause of telecommunications outages in emergencies and natural disasters is due to power supply being interrupted to a telecommunications facility.

This amendment, in combination with other low-impact facilities in the LIFD, is also intended to allow carriers to install Standalone Power Systems (SAPs) to help power telecommunications. SAPs typically comprise solar panels, batteries and back-up generators to supply power where connecting a site to an electricity network is problematic, or during emergencies or natural disasters.

Cabling on bridges as a low-impact facility

The Instrument amends the LIFD to determine that the installation of cabling is a low-impact facility in the following circumstances:

- Where cabling is installed within existing conduit deployed by a carrier that is attached to, on, under or within a bridge; or
- Where cabling or conduit is installed within existing ducts of a bridge.

Previously, the installation of cabling on bridges has not been included as its own separate specified low-impact facility in the Schedule to the LIFD, and therefore has been unable to

qualify for the Powers and Immunities framework in its own right. However, it is understood that past industry practice was to install such cabling either on the basis that it was ancillary to the installation of another facility (see paragraph (c) of the definition of *installation* in clause 2 of Schedule 3 to the Tel Act and Section 3.1, Part 3 of the LIFD), or alternatively on the basis that it constituted maintenance of another facility under clause 7 of that Schedule.

However, recent decisions of the Federal Court of Australia have indicated that this practice did not reflect a correct interpretation of the legislation.¹

The intent of these amendments to the LIFD is to determine the installation of cabling and conduit on bridges to be a low impact facility in certain circumstances. The rationale for this is to shorten the process associated with deployments and reduce costs for carriers, resulting in deployments that are timelier. The ultimate outcome of this is better connectivity for communities, and it also avoids perverse outcomes, such as carriers having to trench under riverbeds to install cabling and conduit.

These amendments are part of ensuring that telecommunications carriers have the necessary power to undertake the efficient construction and maintenance of telecommunications facilities across Australia in a nationally consistent manner. The carrier powers in Schedule 3 of the Tel Act are intended to be interpreted in a broad manner consistent with the object of the Act and the expectations of Australians that they have access to reliable telecommunications services like they do for water and electricity.

Co-location

The Instrument amends Item 2, Part 8 of the Schedule to the LIFD to increase the maximum volume of co-located facilities in residential areas to 50 percent. The amendment implements recommendations from various inquiries and reports that co-location of facilities, either on existing telecommunications or public infrastructure, should be encouraged.

The amendment is aimed at improving coverage and capacity of telecommunication services in residential areas. It also aims to improve broader visual amenity of telecommunications facilities by enabling carriers to co-locate on current infrastructure, rather than having to install additional larger infrastructure to service an area, such as towers or poles.

Summary of Changes

A summary of the changes made to the LIFD by the Instrument in relation to low-impact facilities is set out in Table 1.

¹ See *State of Queensland v Telecommunications Industry Ombudsman* [2022] FCAFC 158 and *Optus Fixed Infrastructure Pty Ltd v Telecommunications Industry Ombudsman* [2023] FCA 928.

Table 1: Summary of Amendments to the Schedule of the LIFD

Reference in the LIFD	Summary of the Amendment	Applicable Area of Use
Schedule, Part 1	Increase satellite dish provisions from a maximum of 1.2 metres to 1.8 metres in diameter	Residential, Commercial
Schedule, Part 1	Increase satellite dish provisions from a maximum of 1.8 metres to 2.4 metres in diameter	Industrial, Rural
Schedule, Part 1	Increase maximum allowable height of an omnidirectional antenna or array of omnidirectional antennas from 4.5 metres to 6 metres	Residential, Commercial, Industrial, Rural
Schedule, Part 1	Total protrusion of radiocommunications dish from supporting structure not to exceed 2 metres.	Industrial
Schedule, Part 1	Increase the maximum radiocommunications dish diameter from 2.4 metres to 3.8 metres and total protrusion of dish from supporting structure not to exceed 2 metres.	Rural
Schedule, Part 1	Remove the requirement for a cabinet to be installed on the same structure as a radiocommunications facility	Residential, Commercial, Industrial, Rural
Schedule, Part 3	Increase the size of an equipment shelter from a maximum height of 2.5 metres to 5 metres and the maximum base area from 5m ² to 52m ² .	Industrial, Rural
Schedule, Part 3	Increase dimensions of solar panel arrays from 12.5m ² to 50m ² .	Rural
Schedule, Part 3	Cabling within existing conduit deployed by a carrier that is attached to, on, within, or under, a bridge.	Residential, Commercial, Industrial, Rural
Schedule, Part 3	Cabling or conduit within existing ducts of a bridge.	Residential, Commercial, Industrial, Rural
Schedule, Part 8	Increase maximum co-location volume of co-located facilities from 25% greater, to 50% greater, than volume of original facility or infrastructure.	Residential and Commercial

The Determination makes a number of minor drafting amendments to ensure the proper operation of the LIFD which are set out in the table below.

Table 2: Summary of minor drafting amendments

Reference in the LIFD	Summary of the Amendment
Schedule, Part 1	Omit “relevant local authority”, substitute “relevant local government authority”.
Schedule, Part 1	Omit “Industrial” and “Rural”.
Schedule, Part 3 (heading)	After “housing” insert “and facilities”.
Schedule, Part 3	Omit “equipment” where it appears at the start of a sentence, substitute “Equipment”.

Legislative instrument

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

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

Regulation Impact Statement

The Office of Impact Analysis has determined that an Impact Analysis is not required in relation to the Instrument (OIA24-07926 refers).

Consultation

In November 2024, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts released a consultation paper and exposure drafts of the draft Instrument, outlining proposed amendments to the LIFD, which was open to the public.

Consultation ran from 11 November to 2 December 2024. A total of 26 written submissions were received. A number of the submissions noted concerns relating to cabling on bridges, in particular Item 11 which determined the installation of new cabling on a bridge as a low-impact activity. Based on this feedback the decision was made to not move forward with this amendment.

Statement of compatibility with human rights

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

Notes to the *Telecommunications (Low-impact Facilities) Amendment Determination (No. 1) 2025*

Section 1 Name

This section provides for the Instrument to be cited as the *Telecommunications (Low-impact Facilities) Amendment Determination (No. 1) 2025*.

Section 2 Commencement

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

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

Section 3 Authority

Section 3 provides that the source of authority for making the Instrument is subclause 6(3) of Schedule 3 of the *Telecommunications Act 1997*.

Section 4 Schedules

Section 4 provides that each instrument specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Instrument has effect according to its terms.

Schedule 1 Amendments

Telecommunications (Low-impact Facilities) Determination 2018

Item 1 Schedule, Part 1 (table item 1)

This item replaces table item 1 of Part 1. The replacement table item increases the maximum diameter of a radio or satellite terminal antenna or dish used to connect a subscriber from 1.2 metres to 1.8 metres. It also restricts the areas to which table item 1 applies to residential and commercial areas. This corrects a drafting oversight where items 1 and 2 provided conflicting maximum figures for subscriber connections deployed by radio or satellite terminal antenna or dish in industrial and rural areas. The replacement table item also clarifies a reference to “relevant local authority” and changes it to “relevant local government authority”.

Item 2 Schedule, Part 1 (table item 2, column 2, paragraph (a))

This item increases the maximum diameter of a radio or satellite terminal antenna or dish used to connect a subscriber from 1.8 metres to 2.4 metres in an industrial or rural area.

Item 3 Schedule, Part 1 (table item 3, column 2, subparagraph (b)(ii))

This item clarifies that the “relevant local authority” means the “relevant local government authority”.

Item 4 Schedule, Part 1 (table item 4, column 2, subparagraph (c)(ii))

This item clarifies that the “relevant local authority” means the “relevant local government authority”.

Item 5 Schedule, Part 1 (table item 5, column 2, paragraph (a))

This item increases the maximum length of an omnidirectional antenna or an array of omnidirectional antennas from 4.5 metres to 6 metres.

Item 6 Schedule, Part 1 (table item 6, column 3)

This item removes industrial and rural areas as locations to which table item 6 applies. This corrects a drafting oversight whereby two different table items provided conflicting maximum figures for industrial and rural areas.

Item 7 Schedule, Part 1 (table item 7)

This item amends the low-impact facility described in table item 7 (a radiocommunications dish not more than 2.4 metres in diameter in a specified colour) by adding an additional requirement that a dish attached to a supporting structure must not have a total protrusion from the structure of more than 2 metres. Item 7 is also restricted so that it only applies to industrial areas. This is as a consequence of the insertion of new table item 7A.

This item inserts a new table item 7A which describes the same kind of low-impact facility as in table item 7 (namely, a radiocommunications dish) but provides for a larger maximum diameter of 3.8 metres where it is installed in a rural area.

Item 8 Schedule, Part 1 (table item 8)

This item amends table item 8 to provide that a radiocommunications facility can be deployed with, or without, a cabinet.

The amendment reflects contemporary small cell designs used by some carriers in their networks which no longer require an external cabinet or adjacent equipment shelter to provide telecommunications services to customers.

Item 9 Schedule, Part 3 (heading)

This item changes the heading of the Part 3 to “Above ground housing and facilities” to better reflect the content of the Part.

Item 10 Schedule, Part 3 (table item 4)

This item changes the geographical areas in which the low-impact facility described in table item 4 can be installed by restricting them to residential and commercial areas (industrial and rural areas have been removed but appear in a new item 4A of Part 3 – see below). The amendment also clarifies the reference to “relevant local authority” by changing it to “relevant local government authority” and fixes the capitalisation of the word “Equipment”.

The item inserts a new table item 4A in Part 3 of the Schedule which describes, as a low-impact facility, an equipment shelter in an industrial or rural area that is:

- not more than 5 metres in height;
- with a base area of not more than 52m²; and
- either colour-matched to its background or as agreed between the carrier and the relevant local government authority.

Item 11 Schedule, Part 3 (table item 5)

This item repeals the existing table item and replaces it with the same substantive content but clarifies the reference to “relevant local authority” by changing it to “relevant local government authority” and changes the case of the first word in column 2 of the table item from “equipment” to “Equipment”.

Item 12 Schedule, Part 3 (table item 7, column 2)

This item changes the description of the low-impact facility described in table item 7 (solar panel) by increasing the maximum base area of a solar panel from 12.5 m² to 50m².

The amendment is intended to allow carriers to use Item 7, Part 3 of the Schedule in combination with other low-impact facilities, to install Standalone Power Systems to provide power to telecommunications facilities.

Item 13 Schedule, Part 3 (after table item 10)

This item inserts table items 11 and 12 into Part 3 of the LIFD to determine new low-impact facilities.

Table item 11 prescribes cabling within existing conduit deployed by a carrier that is attached to, on, within, or under, a bridge in a residential, commercial, industrial or rural area as a low impact facility. This is intended to allow a carrier to install cabling through existing conduit, either owned by carrier themselves or conduit owned by another carrier.

Table item 12 prescribes cabling or conduit within existing ducts of a bridge in a residential, commercial, industrial or rural area as a low impact facility. This amendment is not intended to allow a carrier to create new ducts in a bridge for cabling or conduit to be deployed. Rather, the intention is for cabling or conduit to be installed within existing ducts of a bridge.

Item 14 Schedule, Part 8 (table item 2)

Item 14 amends the existing item 2 in Part 8 to enable the total co-location volume of the co-located facilities to be a maximum of 50 per cent greater than the volume of the original facility or the original infrastructure (increased from a maximum of 25 per cent) for residential areas. Since this is the same percentage as applies to co-locations in commercial areas, the amendment combines table items 2 and 3 into the one table item.

Item 15 Schedule, Part 8 (table item 3)

As a consequence of item 14, this item repeals the current item 3 of Part 8 of the Schedule.

Statement of Compatibility with Human Rights

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

Telecommunications (Low-impact Facilities) Amendment Determination (No. 1) 2025

The *Telecommunications (Low-impact Facilities) Amendment Determination (No. 1) 2025* (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

Part 1 of Schedule 3 of the *Telecommunications Act 1997* (the Tel Act) gives telecommunications carriers the power to inspect land, install low impact facilities and maintain any type of telecommunications facility. In doing so, carriers are provided immunities from certain types of state and territory legislation, such as planning laws. This is commonly referred to as the Powers and Immunities Framework.

The Powers and Immunities Framework has a number of safeguards to protect landowner and occupier interests. This includes requirements to notify landowners and occupiers of upcoming works, and provides them with the ability to object to the Telecommunications Industry Ombudsman. It also enables landowners and occupiers to seek compensation. The *Telecommunications Code of Practice 2021* also requires carriers to comply with certain conditions pre, during and post installation of a low-impact facility.

Schedule 3 of the Tel Act empowers the Minister for Communications to determine that specified facilities are low-impact facilities that can be installed under the Powers and Immunities Framework. The Minister has made the *Telecommunications (Low-impact Facilities) Determination 2018* (the LIFD) for that purpose.

The Instrument amends the LIFD to make changes to the types of facilities determined to be low-impact by the Minister for Communications.

The amendments to the LIFD will help to enhance connectivity for all Australians by improving the efficiency with which telecommunications networks can be deployed, whilst enhancing the resiliency and energy usage of telecommunications infrastructure.

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

Human rights implications

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

Conclusion

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