

The Senate

Environment and Communications
Legislation Committee

Telecommunications Legislation Amendment
Bill 2018

September 2018

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ISBN 978-1-76010-825-0

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Committee membership

Committee members

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Inquiry into the Telecommunications Legislation Amendment Bill 2018

1.1 On 13 August 2018, the Senate referred the Telecommunications Legislation Amendment Bill 2018 (the bill) to the Senate Environment and Communications Legislation Communications Committee (the committee) for inquiry and report by 31 August 2018.¹ The reporting date was subsequently extended to 10 September 2018.²

Purpose of the bill

1.2 The bill contains two amending schedules. The first schedule proposes to amend the *National Broadband Network Companies Act 2011* (NBN Act) to require NBN corporations, such as NBN Co Ltd (NBN Co), to provide emergency services organisations with access in certain circumstances to telecommunications towers, sites and facilities.³

1.3 The second schedule proposes to amend the *Telecommunications Act 1997* (Tel Act) to allow the installation of communications towers on a temporary basis under certain conditions. The installation is subject to requirements set out in ministerial determinations, and includes a requirement that the installation occur as a 'low-impact facility'.⁴

Conduct of the inquiry

1.4 The committee advertised the inquiry on its website and wrote to relevant organisations inviting written submissions by 21 August 2018. The committee did not hold a hearing for this inquiry but requested answers to questions on notice from a range of stakeholders.

1.5 The committee received 8 submissions which are listed at Appendix 1 of this report. The public submissions are available on the committee's website at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/TelcoBill2018

1.6 The committee thanks all of the individuals and organisations that contributed to the inquiry.

1 *Journals of the Senate*, No. 106—13 August 2018, p. 3430.

2 Senate Environment and Communications Legislation Committee, *Progress Report*, 28 August 2018.

3 *Explanatory Memorandum*, pp. 2–3.

4 *Explanatory Memorandum*, pp. 2–3.

Reports of other committees

1.7 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.8 The bill has been considered by the Scrutiny of Bills committee and the Parliamentary Joint Committee on Human Rights. Neither committee had any comment on the bill.⁵

Consultation process

1.9 The Department of Communications and the Arts (the department) detailed an extensive consultation process prior to the introduction of the bill in June 2018, which included opportunities for multiple groups and individuals to provide feedback on the exposure draft of the bill and associated documents. More than 100 submissions were received by the department, of which less than 10 per cent contained objections to the proposals. The majority of respondents provided either no comment or support to the proposals. Those not in support of the proposals identified general concerns regarding visual amenity, safety, land owners rights and health impacts.⁶

Support for the bill

1.10 Generally submitters supported the bill.⁷ The Australian Mobile Telecommunications Association (AMTA) and Communications Alliance in a joint submission, for example, stated that:

The ability to deploy temporary towers under certain conditions will greatly facilitate the provision of mobile telecommunications supporting public events, holiday periods and importantly good communications for public safety agencies and other responders during times of emergency.⁸

1.11 The Northern Territory Police, Fire and Emergency Services stated that it supported the bill 'in its entirety' and went on to comment that access to NBN infrastructure will permit enhanced service delivery for police, fire and emergency services.⁹

5 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 8 of 2018*, p. 36; Parliamentary Joint Committee on Human Rights, *Report no. 7 of 2018*, p. 90.

6 Department of Communications and the Arts, *Submission 5*, p. 7.

7 ESTA, *Submission 1*, p.1.

8 AMTA and the Communications Alliance, *Submission 2*, p. 3.

9 Northern Territory Police, Fire and Emergency Services, *Submission 6*, p. 1.

1.12 However, some submitters suggested that several matters needed to be clarified while others questioned the inclusion of events and seasonal demand within the proposed regime. These issues are discussed below.

Issues raised in submissions in relation to Schedule 1 – NBN tower access regime

1.13 Currently, emergency services personnel can gain access to telecommunications towers owned by carriers to deploy equipment that allows them to operate more efficiently. However, this is not the case with NBN towers and associated sites and facilities, as NBN statutory line of business restrictions limit NBN to supplying eligible services to persons who are carriers or service providers. It is noted in the Explanatory Memorandum, that in the past, entities have requested access to towers owned or operated by NBN corporations but granting access has not been possible.¹⁰ However, there is 'a clear public interest' in emergency services organisations being able to access NBN towers.¹¹

Amendments proposed in Schedule 1

1.14 Schedule 1 of the bill proposes to amend the NBN Act to require NBN corporations to provide access in certain circumstances to towers, and associated sites and facilities, to eligible persons who are neither carriers nor service providers. The Explanatory Memorandum notes that eligible persons are 'defined to include police, fire, ambulance and state or territory emergency services'.¹² NBN Co will not be required to provide access if:

- this is not technically feasible;
- it does not have sufficient capacity on the tower for its own reasonable requirements or existing contractual requirements; or
- it is reasonable for an eligible person to obtain access from another tower in the vicinity of the NBN tower.¹³

Issues raised in submissions

1.15 The proposed amendments were supported by WALGA which stated:

WALGA applauds the common-sense amendment to make NBN towers accessible to Emergency Services Organisations. The current statutory line of business restrictions applying to NBN should be removed to allow

10 *Explanatory Memorandum*, p. 4; see also p. 11.

11 Second reading speech, *Senate Proof Hansard*, 25 June 2018, p. 61. See also *Explanatory Memorandum*, p. 17.

12 *Explanatory Memorandum*, p. 2.

13 *Explanatory Memorandum*, pp. 9–10.

Emergency Services Organisations to have access to NBN towers where technically feasible.¹⁴

1.16 However, the Victorian Emergency Services Telecommunications Authority (ESTA) sought clarification as to whether it was covered by the definition of eligible persons as it typically accesses sites on behalf of emergency services for the state of Victoria.¹⁵

1.17 In addition, the Queensland Law Society (QLS) commented that the current drafting is 'unreasonably wide with respect to who may request access'. The QLS went on to stated:

...a reasonable degree of flexibility may be required, particularly regarding urgent access by emergency services. However, as drafted section 19 provides little detail regarding who, or under what circumstances, a person or persons identifying as, for example, emergency services, ought to be granted access as requested.¹⁶

1.18 The QLS supported this detail being included in the bill or by way of statutory guidelines to ensure NBN providers and consumers have appropriate information and to ensure proper oversight and accountability.¹⁷

1.19 In relation to the matter raised by ESTA, the committee notes that proposed subsection 19H(2) provides that the Minister, by legislative instrument, specify one or more additional classes of persons who would be able to access towers owned or operated by an NBN corporation.¹⁸ The committee considers that the inclusion of this provision provides the Minister with flexibility to address any concerns with provision of access for eligible persons as they arise and notes that the Explanatory Memorandum states:

This power for the Minister to specify additional classes of persons provides flexibility to expand the tower access regime, if appropriate, in the future, if other classes of persons are identified who could access NBN towers. Expanding access should only be considered where there is a clear benefit to the public from doing so, and proposed subsection 19H(3) therefore provides that the Minister must not make an instrument under subsection [19H](2) unless the Minister is satisfied that it is in the public interest to do so.¹⁹

14 Western Australia Local Government Association (WALGA), *Submission 4*, p. 1.

15 ESTA, *Submission 1*, p. 1.

16 Queensland Law Society, *Submission 7*, p. 2.

17 Queensland Law Society, *Submission 7*, p. 2.

18 *Explanatory Memorandum*, p. 4.

19 *Explanatory Memorandum*, p. 17.

Issues raised in relation to Schedule 2 – Temporary telecommunications facilities

1.20 Under current arrangements in Schedule 3 of the Tel Act, carriers are afforded powers to enter land for inspection and to install and maintain certain types of facilities. Schedule 3 also provides certain immunities including from state and territory law in relation to:

- environmental impact assessments;
- protection of places or items of natural or cultural heritage;
- town planning;
- planning, design, siting, construction, alteration or removal of structures;
- powers and functions of local governments;
- the use and tenancy of land;
- the supply of fuel or power; and
- matters specified in regulations (wherever occurring).²⁰

1.21 Carriers are also subject to a series of safeguards, for example, requirements to notify and provide a land owner/occupier an opportunity to object to the proposed activity. In addition, the laws are limited in a number of ways including that 'the Tel Act allows for certain facilities to be specified as "low-impact", which in turn allows them to be deployed using carrier powers and immunities'.²¹

1.22 The current regime does not permit towers, other than replacement towers of a particular height to be installed using carrier powers and immunities.²² In relation to temporary towers, local government planning approval is required in many Australian jurisdictions. It is noted in the Explanatory Memorandum that:

Carriers are often required to obtain development approval from local governments to temporarily install these facilities, which increases costs and timeframes for deployment, and affects the business case for their use. The inability to provide temporary facilities can mean there is insufficient capacity for customers to connect to mobile networks during emergencies, maintenance, major events and peak holiday periods.²³

20 Department of Communications and the Arts, *Submission 5*, p. 6.

21 Department of Communications and the Arts, *Submission 5*, p. 3.

22 *Explanatory Memorandum*, p. 3.

23 *Explanatory Memorandum*, p. 3. See also Department of Communications and the Arts, *Submission 5*, p. 3.

Amendments proposed in Schedule 2

1.23 The bill proposes to permit the Minister for Communications to determine a temporary facility is a low-impact facility, which engages the carrier immunities described above and would fast track the installation of towers on a temporary basis.²⁴ In these circumstances, the Minister may determine that temporary telecommunications communications facilities are low-impact facilities (allowing them to by-pass state and territory planning laws), but only when used to:

- maintain coverage during the maintenance of existing facilities, or construction or installation of replacement facilities;
- provide additional coverage during concerts, festivals, sports or peak holiday periods; or
- provide services to emergency services during emergencies or natural disasters.²⁵

1.24 The Explanatory Memorandum notes that temporary towers would be limited to no more than 30 metres in height (measured from the ground to the top of the tower), except in limited circumstances:

- when installed in a rural area to minimise disruption that might result from maintenance or replacement of another facility; or
- to provide services to emergency services so that the service can deal with an emergency or natural disaster, in which case the height limit does not apply.²⁶

Issues raised in submissions relating to Schedule 2

1.25 Submitters to the inquiry raised concerns about the practical effect of allowing the Minister to determine temporary telecommunications infrastructure as a 'low-impact facility', including exemptions from certain State and Territory planning laws, tower heights and the application of notification and objection provisions.

State and territory planning exemptions

1.26 The ATMA and the Communications Alliance supported the amendments in Schedule 2 on the basis that they will increase the ability of telecommunications providers to provide services to customers. In relation to the state and territory planning exemptions, they commented:

The benefits of exemption via Carrier Powers and Immunities from state and local government planning requirements are primarily reduced costs and delays in planning processes, which are overarchingly designed to cater for more permanent buildings and infrastructure.

24 *Explanatory Memorandum*, p. 3.

25 *Explanatory Memorandum*, p. 3.

26 *Explanatory Memorandum*, p. 3.

The temporary nature of the facilities that are the subject of Schedule 2 of the TLAB Bill does not warrant this level of governance as the impacts on amenity for the community are limited both by the reduced construction activity involved in both commissioning and removal, and in the limited amount of time that the facility presents any visual or operational impacts.²⁷

1.27 The AMTA and the Communications Alliance submission provided numerous instances where temporary telecommunications equipment was deployed to support emergency services efforts and communities affected by natural disasters and to provide services for events.²⁸ The submission included instances where state, territory or local government planning regulations prohibited carriers from deploying additional telecommunications facilities due to excessive regulatory burden.²⁹ It was also noted that:

...Carriers report that local governments may often be supportive of the proposed temporary facilities which benefit their communities but have no discretion within local government or state planning laws to provide a facilitated pathway through regular DA processes, meaning unnecessary administrative burden and costs on both Carriers and local government authorities to achieve an outcome on which they already have consensus.³⁰

1.28 In addition, the AMTA and the Communications Alliance stated that there was little or no reported concern by members of the public regarding any temporary facility deployments to date. It was also noted that carriers have sought to reduce the impact of temporary facilities on the amenity of local communities, for example, by deploying silent generators in built up areas.³¹

1.29 The joint submission went on to argue that a key advantage of the bill was that planning and consultation would be harmonised across the Commonwealth. This would provide much greater certainty to carriers, many of which make significant investments in the deployment of temporary telecommunications facilities. The joint submission contended that continued uncertainty under current arrangements may make deployment of facilities sub-optimal or uneconomic.³²

27 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Submission 2*, p. 1.

28 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Supplementary Submission 2*, pp. 2–3.

29 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Supplementary Submission 2*, pp. 3.

30 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Supplementary Submission 2*, p. 2.

31 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Supplementary Submission 2*, p. 4.

32 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Supplementary Submission 2*, p. 2.

1.30 However, the exemption of temporary towers from state and territory planning regimes was only supported in part by local government submitters. The Australian Local Government Association (ALGA), for example, commented that:

The amendments proposed in the bill have caused serious concern for local government in so far as they override important planning, consultation and safety assessment provisions.

ALGA and the associations view are that temporary communication equipment should be exempt from state and territory planning and council approvals only in the case of emergencies or natural disasters. In other cases, it should be subject to approvals to ensure that there is no interference with other infrastructure or services, heritage, environmentally significant areas, or no increase in the local risk profile.³³

1.31 Similarly, WALGA submitted that it broadly supported the simplification of regulations around temporary telecommunications facilities in cases of genuine emergencies or unplanned system outages. However, it did not agree that events and seasonal demand are either emergencies or are unduly subject to delays imposed by lengthy development approvals processes.³⁴

1.32 WALGA argued that it is not beyond the capacity of carriers to plan ahead with confidence and suggested local governments have a range of planning and permit options 'to allow for a mutually satisfactory outcome and by passing this requirement is likely to lead to more conflict than cooperation'. WALGA concluded that it did not consider that 'carriers have a sufficiently compelling case to bypass these important planning provisions' in relation to events or seasonal demand.³⁵

1.33 Both ALGA and WALGA raised concerns about heritage considerations.³⁶ ALGA stated that the proposed provisions should not be able to override local government's heritage provisions and precincts. ALGA went on to state:

These areas have been identified to protect the integrity of an area. The fact that a Local Government Heritage overlay is not listed on a heritage register must not lead to the assumption that it has less heritage, cultural or environmental significance. Local Government has heritage provisions under its local planning scheme and the heritage sites have been identified and recognised through an extensive investigation and community engagement process. Uncontrolled access within heritage areas and precincts could adversely impact the integrity of the area.

Similarly, temporary telecommunications infrastructure should not be allowed in areas identified by local governments to be of special cultural, landscape, or environmental value without development approval that has

33 ALGA, *Submission 8*, p. 1.

34 WALGA, *Submission 4*, p. 1.

35 WALGA, *Submission 4*, p. 2.

36 WALGA, *Submission 4*, p. 2; ALGA, *Submission 8*, p. 2.

considered the potential impacts and the mitigation and amelioration of those impacts. ALGA stresses the importance of proper community consultation in relation to heritage and areas of special cultural, landscape, or environmental value.³⁷

1.34 ALGA also pointed to the potential significant consequences of the installation of temporary mobile infrastructure without due planning approvals. These include:

- creation of hazards such as obscuring drivers' line of sight;
- interference with other infrastructure or services and may increase the local risk profile;
- damage or destruction of items of Aboriginal or Torres Strait Islander heritage;
- adverse impacts on landscapes if the value is related to visual amenity; and
- damage of areas of environmental value with even potential loss of important species at the local level.³⁸

1.35 The department's submission provided the rationale for the temporary facilities amendments. The department commented that the amendments recognise the needs of the community for access to telecommunications during emergencies, events' peak holiday periods and for maintenance. At the same time, the amendments will allow carriers to deploy temporary facilities more efficiently and in a nationally uniform way.³⁹

1.36 The department also noted that in some jurisdictions planning approval is not required. For example, in New South Wales, many permanent and temporary towers are already installed without development approval under the State Environmental Planning Policy (Infrastructure) 2007. In Victoria, the Code of Practice for Telecommunications Facilities allows for the installation of some temporary telecommunications towers without requiring development approval.⁴⁰

1.37 Further, the department emphasised the safeguards relevant to the bill. First, the bill introduces new safeguards related to strict conditions regarding circumstances when towers can be installed, maximum tower height, removal timeframes and land restoration. Secondly, existing safeguards will apply. These are included in Schedule 3 of the Tel Act and the *Telecommunications Code of Practice 2018* (Code of

37 ALGA, *Submission 8*, p. 2.

38 ALGA, *Submission 8*, p. 3.

39 Department of Communications and the Arts, *Submission 5*, p. 3.

40 Department of Communications and the Arts, *Submission 5*, p. 3. The Telecommunications Industry Ombudsman (TIO) noted that the national regime would override the NSW and Victorian regimes and go much further than those state regimes. TIO, *Submission 3*, p. 1.

Practice).⁴¹ The department added that the Code of Practice provides broad requirements that can be applied to temporary facilities include that a carrier must take all reasonable step to act in accordance with good engineering practice, and to protect the safety of persons and property, and the environment. Concerns of land owners and occupiers can be raised through the notification and objection process.⁴²

1.38 The department also submitted that the bill includes detailed conditions to ensure appropriate scrutiny by Parliament, which should provide confidence to communities that the temporary facilities will be carefully controlled.⁴³ Determinations made under Schedule 2 of the bill will specify the types of temporary facilities that may be installed, and be subject to scrutiny by the Senate Standing Committee on Regulations and Ordinances, and subject to the disallowance regime in the *Legislation Act 2003*.⁴⁴

Timeframes for temporary facilities

1.39 ALGA pointed to the provisions related to the time limits for temporary facilities. ALGA noted that the bill proposes that the carrier must ensure that the total time a facility is installed for an event does not exceed 183 days in a calendar year, which is half a year. In addition, facilities installed to provide additional services in peak times would not be permitted to be installed for more than 90 days in a calendar year in that 'place'. ALGA argued that as the bill does not define place 'so what is to stop the carrier just moving the temporary facility from one street to another'.⁴⁵

1.40 The Telecommunications Industry Ombudsman (TIO) also commented on the proposed timeframes for the installation of temporary facilities and argued that these will, in fact, be 'semi-permanent' facilities. The TIO commented this goes well beyond what was proposed by the department's public consultation and what is currently permitted in NSW and Victoria.⁴⁶

1.41 The TIO contended that portable facilities should only be characterised as temporary in limited circumstances and with additional restrictions. These include imposing a maximum time period for installation, prohibiting carriers from relocating facilities to avoid a maximum time limit and not allowing carriers to replace temporary facilities with a 'like' system.⁴⁷

41 Department of Communications and the Arts, *Submission 5*, pp. 3–5.

42 Department of Communications and the Arts, *Submission 5*, p. 5.

43 Department of Communications and the Arts, *Submission 5*, pp. 3–4.

44 Department of Communications and the Arts, *Submission 5*, p. 4.

45 ALGA, *Submission 8*, p. 1.

46 Telecommunications Industry Ombudsman, *Submission 3*, p. 2.

47 Telecommunications Industry Ombudsman, *Submission 3*, p. 2.

1.42 The TIO argued the proposed framework 'should not assume carrier compliance and should set well-defined limits on carrier powers and immunities so there is certainty as to what carriers are lawfully permitted to do'.⁴⁸

1.43 In relation to concerns about the time limits for temporary facilities, the department stated that the 183 day annual limit included a safeguard to ensure that a temporary facility cannot become a permanent installation. It added:

For example, a carrier could install a temporary facility for a football game at the MCG to boost services and the carrier would have 28 days to remove the facility after the event. However, during the 28 day period, another game could be held and the clock would restart. While this may be acceptable for a limited time, where a sporting facility or event venue requires boosted services on a regular basis, the 183 day limit will encourage carriers to submit a development application so that the local council can consult with the community and decide whether a permanent facility be installed.⁴⁹

1.44 The department also commented on the 90 day limit for seasonal demand and stated that this timeframe should provide an adequate amount of time for the required seasonal coverage while balancing the interests of the local community. If a carrier wished for the tower to be permanent or in place for longer than 90 days, it would need to comply with planning requirements.⁵⁰

Land remediation

1.45 The Explanatory Memorandum notes the bill includes conditions to ensure that the temporary telecommunications facilities are to be removed within a set timeframe and that carriers restore the land after the equipment's removal.⁵¹

1.46 WALGA commended the inclusion of land remediation requirements, but argued there was substantial evidence that carriers have a poor track record with respect to land remediation. To address these concerns, WALGA suggested that proposed subsection 9A(2) of the Tel Act be amended to add 'to the satisfaction of the land owner or occupier' to the requirement that land must be remediated to a similar condition prior to the installation of temporary telecommunications facilities.⁵²

1.47 The department submitted that except for temporary facilities installed during holiday demand peaks, facilities are required to be removed 28 days after they are no longer required.⁵³ Further, carriers will be required to take all reasonable steps to

48 Telecommunications Industry Ombudsman, *Submission 3*, p. 2.

49 Department of Communications and the Arts, *Submission 5*, p. 4.

50 Department of Communications and the Arts, *Submission 5*, p. 4.

51 *Explanatory Memorandum*, p. 3.

52 WALGA, *Submission 4*, p. 1.

53 Department of Communications and the Arts, *Submission 5*, p. 4.

'commence restoration of the land within 10 days of the temporary facility being removed'.⁵⁴

Tower height

1.48 Under the proposed amendments, a temporary tower would be limited to no more than 30 metres in height (measured from the ground to the top of the tower). Exceptions to this requirement are provided for when the temporary tower is being installed:

- during maintenance or replacement of facilities in rural areas, in which case the tower may be higher than 30 metres, or the same height as the tower being maintained or replaced; or
- to provide additional capacity to emergency services organisations to manage emergencies and natural disasters—in these cases there is no height restriction.⁵⁵

1.49 The AMTA and the Communications Alliance requested clarification in the explanatory materials, or elsewhere, that the height limit 'does not include the height of antennas attached to the tower'.⁵⁶

1.50 The TIO noted that the bill would permit an overall increase of height from the current permissible maximum height of 25 metres to 30 metres. The TIO submitted:

An increase in height from five to 30 metres from the ground (assuming there has been no five metre extension) for portable temporary facilities is a significant increase in height. We note this would increase the height for temporary facilities that may already be installed in an emergency.

We reiterate our views above on achieving the characteristic of temporary. We believe this would more appropriately achieve the balance between enabling carriers to install portable temporary facilities and safeguarding the interests of landowners and occupiers.⁵⁷

1.51 The department commented that the maximum tower height was one of the safeguards being introduced by the bill.⁵⁸

54 Department of Communications and the Arts, *Submission 5*, p. 4.

55 Department of Communications and the Arts, *Submission 5*, p. 4.

56 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Submission 2*, p. 3.

57 Telecommunications Industry Ombudsman, *Submission 3*, p. 3 (references omitted).

58 Department of Communications and the Arts, *Submission 5*, p. 4.

Other issues raised

1.52 The TIO commented on a range of other issues including that a number of temporary facilities which may be installed on the same land for the annual period by multiple carriers. In order to address this issue, the TIO suggested that consideration be given to whether the regulatory framework might restrict the maximum number of temporary facilities that may be installed and allowed on the same land for the duration of the annual period. The TIO concluded that this 'could more appropriately safeguard landowners and occupiers, and also incentivise removal'.⁵⁹

1.53 The TIO also commented on the provisions related to location of a temporary facility where it is 'practicable to achieve the purpose' and how to ascertain that this is the case. The TIO suggested that without further clarification in the Telecommunications (Low-Impact Facilities) Determination 2018 or Code of Practice, it would be difficult to determine whether the proposed location is practicable to achieve the purpose.⁶⁰

Notification and objection provisions

1.54 The department has indicated that the notification and objection process contained in Schedule 3 of the Tel Act 'would apply to temporary facilities, noting that there are some exemptions, such as during an emergency'.⁶¹ However, the AMTA and the Communications Alliance questioned whether this would be the case and suggested that clarification was required. They submitted that they accepted the department's position in response to submissions during the consultation process that 'a separate notification and objection procedure is not required if Clause 17(6) of Schedule 3 of the *Telecommunications Act 1997* can be relied on for unplanned activities requiring temporary installations including maintenance of coverage'. However, the AMTA and the Communications Alliance 'would prefer that Clause 17(6) be expanded to explicitly include an emergency event'.⁶²

1.55 The TIO also commented on the notification and objection provisions. The TIO typically receives objections made by a wide range of stakeholders, including farmers, building owners, apartment owners, universities, hotels, public utilities, state, territory and local government authorities. Over the past five years, the TIO has determined between 12 to 15 land access objections each financial year.⁶³

59 Telecommunications Industry Ombudsman, *Submission 3*, p. 3.

60 Telecommunications Industry Ombudsman, *Submission 3*, p. 4.

61 Department of Communications and the Arts, *Submission 5*, p. 5.

62 Australian Mobile Telecommunications Association and Communications Alliance Ltd, *Submission 2*, p. 3.

63 Telecommunications Industry Ombudsman, *Submission 3*, p. 1.

1.56 The TIO stated that clarifications would be helpful to assist the TIO in handling objections about temporary facilities expeditiously. The TIO identified the following matters:

- the meaning of 'in the vicinity of the venue' and 'in the vicinity of the other facility';
- the types of events for which installation of a temporary facility is not permitted; and
- the public and school holidays which are covered.⁶⁴

1.57 The TIO submitted that two other reforms are necessary for the bill to have its intended effect on enactment. These relate to the conferral of powers on entities and the conferral of jurisdiction and powers to the Ombudsman to handle objections.⁶⁵

1.58 The department commented that under the existing regime, affected landowners or occupiers must be notified by the carrier prior to installation of facilities, and have a right to object to the TIO, who may issue subsequent directions to carriers. The department added that the notification and objection process would apply to temporary facilities but there are some exemptions such as during an emergency situation.⁶⁶

Committee view

1.59 The committee considers that the amendments proposed in the bill are a balanced approach, incorporating adequate safeguards, to enable emergency services organisations access to NBN-owned infrastructure in order to enhance public safety during emergencies and natural disasters.

1.60 The committee notes the comments from local government concerning the inclusion of events and instances of seasonal demand in the proposed framework for the installation of temporary communications towers. The committee acknowledges the concerns raised by local government, particularly in relation to heritage matters, but it believes that it is not unwarranted that these two circumstances come within the proposed framework. Not only will temporary facilities ensure customers are able to connect to mobile services but they will also provide critical services to emergency services should the need arise during an event or peak seasons.

1.61 The committee also appreciates the concerns raised in relation to land remediation and tower height but considers that the safeguards in the current regulatory regime will adequately address these issues. In addition, the committee notes evidence from the department concerning the application of parliamentary

64 Telecommunications Industry Ombudsman, *Submission 3*, pp. 4–5.

65 Telecommunications Industry Ombudsman, *Submission 3*, p. 5.

66 Department of Communications and the Arts, *Submission 5*, p. 5.

scrutiny and disallowance and considers that this offers further protection and oversight.

1.62 In relation to the AMTA and the Communications Alliance and TIO's suggestions for clarification of certain matters related to notification and objection provisions, the committee believes that the department should give consideration to addressing these matters. The robustness of the notification and objection process and the expeditious assessment of objections is an important element for ensuring positive outcomes for all stakeholders.

1.63 In addition, the committee is of the view that there is merit in giving further consideration to ensuring that temporary facilities cannot be relocated as a means of avoiding the maximum time limits proposed by the bill. The committee also considers that the heritage concerns raised by submitters warrant further examination.

1.64 On this basis, the committee notes the benefits of the bill in fast tracking the provision of essential services to communities across Australia where they are needed, and recommends that the bill be passed.

Recommendation 1

1.65 That committee recommends that the Department of Communications and the Arts examine, and if necessary, strengthen drafting of the bill to provide greater certainty that carriers will not be able to relocate temporary facilities as a means to avoid the maximum time limit.

Recommendation 2

1.66 That committee recommends that the Department of Communications and the Arts examine, and if necessary, strengthen drafting of the bill to provide greater certainty over the protections that will apply for heritage areas, including places of cultural and environmental significance.

Recommendation 3

1.67 The committee recommends the Senate pass the bill.

**Senator Jonathan Duniam
Chair**

Australian Greens – Dissenting Report

Summary

1.1 The Telecommunications Legislation Amendment Bill 2018 includes two measures. The first is to allow access to NBN towers by emergency service organisations and the second is to specify temporary telecommunications towers as low-impact facilities.

1.2 The Australian Greens support the intent of this bill and we strongly support access to telecommunications services during emergencies. We support Schedule 1 of the bill.

1.3 We support the components of Schedule 2 that pertain to emergencies and unplanned outages. However, we do not support carrier immunity to local planning rules and processes for events, seasonal demand, and scheduled maintenance.

Issues relating to Schedule 2

1.4 The WA Local Government Association¹ (WALGA) and the Australian Local Government Association² (ALGA) both support making NBN towers accessible to emergency services and simplifying the regulations around the provision of temporary towers for emergencies and emergency maintenance. However, they do not support the exemption of temporary towers from state, territory, and local planning approvals for events, holidays, or schedule maintenance.

1.5 WALGA notes in their submission that:

WALGA does not support the notion that events and seasonal demand are either emergencies or are unduly subject to "delays imposed by lengthy development and approvals and processes". These conditions are clearly predictable and should therefore be subject to normal planning provisions.

Current protocols and procedures covering event management are well established, with Local Government and/or affected land-owners consulted about temporary structures and services...The importance of this interactivity with Local Government cannot be under-stated as the Local Government invariably retains responsibility for the amenity, aesthetics, safety and well-being of event attendees, local residents and business owners. We do not consider Telecommunication Carriers to have a sufficiently compelling case to bypass these important planning provisions.

A similar argument exists for seasonal demand. This is clearly a predictable situation and should not be beyond the capacity of Carriers to plan ahead with reasonable confidence. Once again, Local Governments have a range

1 WALGA, *Submission 4*, p. 1.

2 ALGA, *Submission 8*, p. 1.

of permit and/or planning options to allow for a mutually-satisfactory outcome and bypassing this requirement is likely to lead to more conflict than cooperation.

Where unique local attributes exist, such as heritage or other local considerations, it is reasonable to expect that Local Government will be well-informed about them. Taking advantage of this local knowledge, rather legislating it into irrelevance, seems to us to be a sensible approach with a clear public benefit.³

1.6 ALGA note in their submission that:

Local Government plays an important role in land use planning and development approvals systems in all State and Territories in Australia. Local Governments work closely with their local communities to plan and manage development, while considering a complex array of issues, to deliver liveable communities now and into the future.

Local Governments administer the development assessment process and are able to grant approval, grant approval with conditions, or refuse an application. The controls regulate densities, height, external design and siting, building materials, open space provisions, and in some jurisdictions the level of developer contribution required to cover physical and/or community infrastructure costs arising from the proposed development. Local Governments also have control over the demolition of buildings. Development control also seeks to address a wide range of environmental, social and economic issues. This includes heritage and environmental protection issues. It also considers safety aspects of proposed developments.⁴

1.7 ALGA also note in their submission that:

Installation of temporary mobile infrastructure without due consideration of safety, heritage and areas of special cultural, landscape, or environmental value as would occur during development assessment could potentially have significant consequences.⁵

1.8 The majority committee report⁶ states that the 'department's submission provided the rationale for the temporary facilities amendments'. However, the department's submission does not provide a justification for the need to exempt carriers from local planning processes in the case of events, holidays, and scheduled maintenance that can be planned for well in advance.

3 WALGA, *Submission 4*, pp. 1–2.

4 ALGA, *Submission 8*, p. 2.

5 ALGA, *Submission 8*, p. 2.

6 Majority committee report, p. 9.

1.9 The majority committee report⁷ also notes that the department's submission states that in some jurisdictions planning approval is not required, including New South Wales and Victoria. However, the Telecommunications Industry Ombudsman (TIO) notes that:

If enacted, the reforms would provide a national regime by extending federal carrier powers and immunities for inspect – install – maintain activities for portable temporary facilities. The national regime would then override the NSW and Victorian regimes and go much further than those state regimes.⁸

1.10 The TIO⁹ also states that portable facilities should only be classified as temporary if they cannot remain at a location for longer than a maximum period (30 days) and that the carrier should be prohibited from relocating or repositioning the facility to circumnavigate the maximum period or replacing the portable facility with a similar portable facility at the end of the 30 day period. The TIO notes the need to prescribe a maximum period for carrier maintenance and the unnecessarily long periods allowed for events and holiday periods. The TIO states that:

The regulatory framework should not assume carrier compliance and should set well-defined limits on carrier powers and immunities so there is certainty as to what carriers are lawfully permitted to do. A regulatory framework that has clearly defined parameters can assist the regulator (the ACMA) in performing its monitoring and compliance role.¹⁰

Recommendations

Recommendation 1

1.11 The Australian Greens recommend passing Schedule 1 of the bill.

Recommendation 2

1.12 The Australian Greens recommend passing Schedule 2 of the bill, amended to remove provisions relating to events, holiday periods, and scheduled maintenance.

Senator Janet Rice
Deputy Chair
Senator for Victoria

Senator Jordon Steele-John
Senator for Western Australia

7 Majority committee report, p. 9.

8 Telecommunications Industry Ombudsman, *Submission 3*, p. 1.

9 Telecommunications Industry Ombudsman, *Submission 3*, pp. 4–5.

10 Telecommunications Industry Ombudsman, *Submission 3*, p. 4.

Appendix 1

Submissions and answer to question on notice

Submissions

- 1 Emergency Services Telecommunications Authority
- 2 Australian Mobile Telecommunications Association and Communications Alliance
- 2.1 Supplementary to Submission 2
- 3 Telecommunications Industry Ombudsman
- 4 Western Australian Local Government Association
- 5 Department of Communications and the Arts
- 6 Northern Territory Police, Fire and Emergency Services
- 7 Queensland Law Society
- 8 Australian Local Government Association

Answer to question on notice

Australian Communications and Media Authority – Answers to written questions on notice

