

21 July 2017

## **POSSIBLE AMENDMENTS TO TELECOMMUNICATIONS CARRIER POWERS AND IMMUNITIES**

The Australasian Railway Association (ARA) welcomes the opportunity to provide comments on possible amendments to telecommunications carrier powers and immunities. The ARA is the national body for the Australasian railway industry, representing passenger and freight operators, track owners and managers, manufacturers of rolling stock, construction companies and all other organisations supplying and contributing to the Australasian rail sector.

This submission reflects the view of the Australian rail industry, and in particular, the above and below rail operators who comprise the ARA Telecommunications Committee.

The ARA understands individual rail companies have provided submissions to the Department addressing specific questions in relation to the proposed amendments to the Telecommunications (Low Impact Facilities) Determination and the Telecommunications Code of Practice 1997. Further, we understand the Office of the National Rail Safety Regulator is providing comments on the proposed changes. ARA respectfully asks that this submission be read in conjunction with their respective contributions on the consultation documents.

ARA would like to highlight and reinforce a number of concerns rail industry members have in relation to the proposed changes to the Determination and Code of Practice. The ARA requests changes to the determination to ensure safety is not compromised in the rail corridor.

These proposed measures impact the way in which rail companies would be able to manage their railway obligations. They are resource intensive, time consuming and, consequently, companies would incur significant costs to meet their safety obligations and to keep all workers, either internal or contractors, safe.

Maintaining high safety standards in the rail corridor by meeting and exceeding the legislative obligations contained in both state and federal rail safety legislation is the highest priority of ARA members. It is within this context the ARA requests the following changes to the proposed amendments to telecommunications carrier powers and immunities.

ARA does not support the expansion of telecommunications carriers' powers and immunities to widen the scope of low impact facilities. By its very nature, working in the rail corridor is not 'low impact' as it presents a significant number of risks. Works undertaken on, or around, a railway is inherently dangerous and needs to be treated as such. No telecommunications facilities can be classified as 'low impact' facilities if they are within a rail corridor.

The rail industry understands and accepts the need for reasonable access, however, it must be on terms which comply with national and state rail safety law and do not compromise safety of those undertaking the works, as well as all other affected parties in and around the corridor. This includes passengers, drivers and other track workers.

Access must be consistent with Rail Infrastructure Manager procedures that are established to meet responsibilities under the National Rail Safety Law. A telecommunications worker, by law, is a rail safety worker and therefore must

be treated in a consistent manner to any other individual accessing the corridor. It is legislative requirement for all workers undertaking works to be suitably qualified, and to be in possession of a valid Railway Industry Worker Card, as stipulated by the Rail Safety National Law. This requirement applies to all those who access the corridor to ensure, as far as reasonably practicable, an individual's safety (and others within the corridor) is not compromised.

In addition, rail companies require a number of essential measures to be undertaken when works are proposed to be conducted on or near rail corridors. These include the development of Safe Work Method Statements, the undertaking of appropriate assessments and supervision activities and ensuring all relevant safety standards are met.

ARA also has concerns in relation to the Land Access and Activity Notices (LAAN) objection periods. The 10-day notice period carriers need to give to land owners and occupiers to carry out works is unsatisfactory. A sufficient amount of time needs to be afforded to ensure the full implications of the proposed works are considered, and for any preparatory works to be undertaken before work is carried out. This includes, but is not limited to, rail timetabling, safety planning and in some cases possession. ARA members expect this notice period to be no less than 30 days to enable proper consideration of these and other issues.

The ARA also opposes the amendment to change the objection periods in the Telecommunications Code to 5 business days from the receipt of a notice for some types of land entry activities, all low-impact facility installation activities, and all maintenance activities. Five days is unworkable and does not provide a sufficient amount of time to fully consider the notice, assess the proposed work and consult with relevant stakeholders if necessary. This could include, for example, consultation with state governments when there are significant heritage matters to be considered. This period needs to be extended to ensure there is satisfactory time for rail organisations to give due consideration to notices and then to lodge an objection if necessary.

The ARA supports the comments made by rail organisations in respect to the proposed size, location, height, use etc of telecommunications equipment within the rail corridor. More broadly, ARA is of the view that any work in the corridor does not negatively impact on future rail infrastructure opportunities and does not compromise industry's ability to preserve the rail corridor for future rail infrastructure.

The ARA encourages further consideration of the issues outlined in this submission to ensure the proposed changes take full account of the various safety issues at play within the rail corridor.

We look forward to working constructively with the Department to ensure any proposed changes are workable, practical and above all, do not compromise rail safety.