



**TCF SUBMISSION TO MBIE ON
LAND ACCESS AND MULTI UNIT COMPLEXES (MUCs) REGIME**

18 February 2016

1. Introduction

- 1.1. The TCF understands that Cabinet has agreed to a proposal for a new Land Access regime to be introduced via amendments to the Telecommunications Act (the Act). The purpose of the regime is to facilitate the UFB roll-out by easing the process for Local Fibre Companies (LFCs) to obtain consents from property owners to install fibre lead-ins across shared land. The details of the regime will be set out in regulations.
- 1.2. The Land Access regime will have two categories of installation. The first, Category One, will be for low impact installations and the LFC will have a statutory right of access to install and subsequently maintain the fibre lead-in. The second category, Category Two, will be an opt-out regime where the LFC will have statutory right of access if the affected property owners do not opt-out within a specified period.
- 1.3. The Land Access regime will overlap with the MUCs regime currently in the Act. One question being considered by MBIE is how these two regimes might work together. Currently, the MUCs regime assumes that consent is required for land access and internal access for every residential and commercial building defined in the Act as a MUC. The reality is that many MUCs require land access consents only. This paper proposes that where internal access is required, the installation is categorised as Category Two. This solution would remove the need for most of the current MUCs provisions in the Act.

2. Purpose

- 2.1. The purpose of this paper is to set out a TCF view of how the Land Access regime might work in practice, set out how the categories might best be defined based on practical experience, and how the MUCs regime and Land Access regimes might work in tandem. The paper also suggests how an appropriate dispute resolution scheme might be developed.

3. Overview of the TCF Position

- 3.1. The current MUCs Code provides an opt-out process for MUC owners where a LFC is requesting consent for both land access and internal building access on the assumption that both are required for all buildings defined as MUCs. However, TCF experience is that many buildings that meet the definition of MUCs do not require access to internal building common areas or risers. For example horizontal MUCs (e.g. terraced houses) have shared land with multiple owners, but the internal building access is controlled individually by the

customer seeking the installation of UFB. Therefore, consent to perform the internal works is not an issue.

- 3.2. The Chorus experience is that a high number of consent issues for MUCs relate to situations where the issue is land access rather than internal building access¹. Consequently, the proposed Land Access regime could arguably provide a solution for all access consents, irrespective of the building type.
- 3.3. An appropriate solution would be to delineate consents based on the nature of the access required, rather than the type of building/complex. The proposed Land Access regime will have two categories. These categories could be used to define the consent required as follows:
 - Category One – Statutory right of access. Low impact installations which involve consents to cross land and do not involve consent to access internal building common areas or risers.
 - Category Two – Opt-out regime involving higher impact installation technologies and access to internal building common areas or risers.
 - Status quo – all other situations that involve technologies not defined as Cat 1 or 2, or financial contribution from property owners.
- 3.4. The above solution would mean that the MUCs regime can be folded into the Land Access regime. There would be a single consistent process across the entire industry which would allow efficiency gains for the LFC, Retail Service Providers (RSPs) and end users. It would also remove the potential for creating confusion for property owners and end users.

4. Category One – Statutory Access

4.1. Overview:

- The category involves consent to shared land where more than one property owner has a legitimate interest in the land that is being crossed. This would include horizontal MUCs (e.g. terraced houses), shared driveways, rights of ways, cross leased residential buildings, etc.

4.2. Consent:

- Land access only

4.3. Technologies:

- It is understood that the policy intention is for this category to include only low impact installation technologies. The installation technologies will cause only temporary disruption and have no significant enduring physical impacts. The TCF's view is that low impact should include the following:
 - Soft surface trenching;
 - Surface mounting of cables, ducts and enclosures (e.g. BUDI boxes²) on the following surface types:
 - Asphalt
 - Concrete (including concrete block)
 - Wood
 - Fibre board mono cladding (structures other than buildings)
 - Concrete or clay brick

¹ Chorus 2015 Annual Report

² A BUDI is a building distributor for a fibre management system that offers the function of splicing and provides a mechanical and environmental protection for the fibre optic components.

- Corrugated iron
- Aerial installation along an existing access aerial corridor for existing utilities and for aerial replacement;
- Ducts or existing drains (where installation does not impede the operation of the drain); and
- Thrusting or drilling where soft surfaces are disrupted.

4.4. Process:

- A written notice providing 5 working days' prior notification to all of the identifiable property owners is required. No response is deemed consent, there are no grounds for opting out, and the LFC has a statutory right to access the land for the purposes of installing, and subsequently, maintaining the fibre lead-in.

5. Category Two – Statutory Access with opportunity for property owners to opt-out

5.1. Overview:

- Category Two involves consent to shared land where more than one property owner has a legitimate interest in the land that is being crossed, and the installation technologies are higher impact than those listed in Category One. The category also includes situations where consent is required to internal building access to common areas and risers. This category can therefore include the same buildings as Category One but the installation involves a higher impact technology, or it involves MUCs where access to common internal areas is required.
- Where a mix of technologies or access is required, the process appropriate to the highest Category is to be used.

5.2. Consent:

- Land access and/or internal building access to common areas or risers.

5.3. Technologies:

- The Land Access installation technologies will cause only temporary disruption and have no significant enduring physical impacts. The TCF's view is that the installation technologies should include the following:
 - Surface mounting on surfaces not included in Category One
 - Thrusting or drilling where hard surfaces are disrupted for less than 6 linear meters or 3m²
 - Hard surface trenching with reinstatement of less than 6 linear meters or 3m²
 - Slot trenching
- Internal installation technologies needed for a shared / common area in a MUC are listed below with images showing some of these technologies provided in the Appendix:
 - Surface mounting on building exterior
 - Surface mounting on building interior (capping)
 - Concealment behind a false ceiling
 - Use of a vertical riser
 - Installation of ancillary equipment (BUDI boxes) on external walls
 - Installation of ancillary equipment in a Common room
 - Penetration via an exterior wall through to the interior of the building (where no existing penetration can be used) or through an internal partition wall.

5.4. Process:

- A single notice providing 15 working days' prior notification to all of the identifiable property owners is required. No response is deemed consent and there are limited grounds for opting out. The LFC will have a statutory right to access the land for the purposes of installing, and subsequently, maintaining the fibre lead-in if no property owners appropriately opt-out. A property owner is not able to opt-out after the deadline for responses by preventing access on the day of the fibre installation.
- Where internal building access is required, the LFC has a right to enter and scope (but not disturb) shared/common property in a MUC upon invitation from a resident (end user) who has requested the installation. Given the ability to visit and scope the internal work involved the notice giving 15 days advance notice will include a high level design of the intended internal work.-
- On page 6 is a diagram provided by MBIE that shows, at a high level, how the regime might work.

6. Status Quo

- 6.1. Consent will be required from all affected parties where there is a financial contribution required, or where the installation technology does not fit the descriptions for the above two categories. This is no change from the current situation.

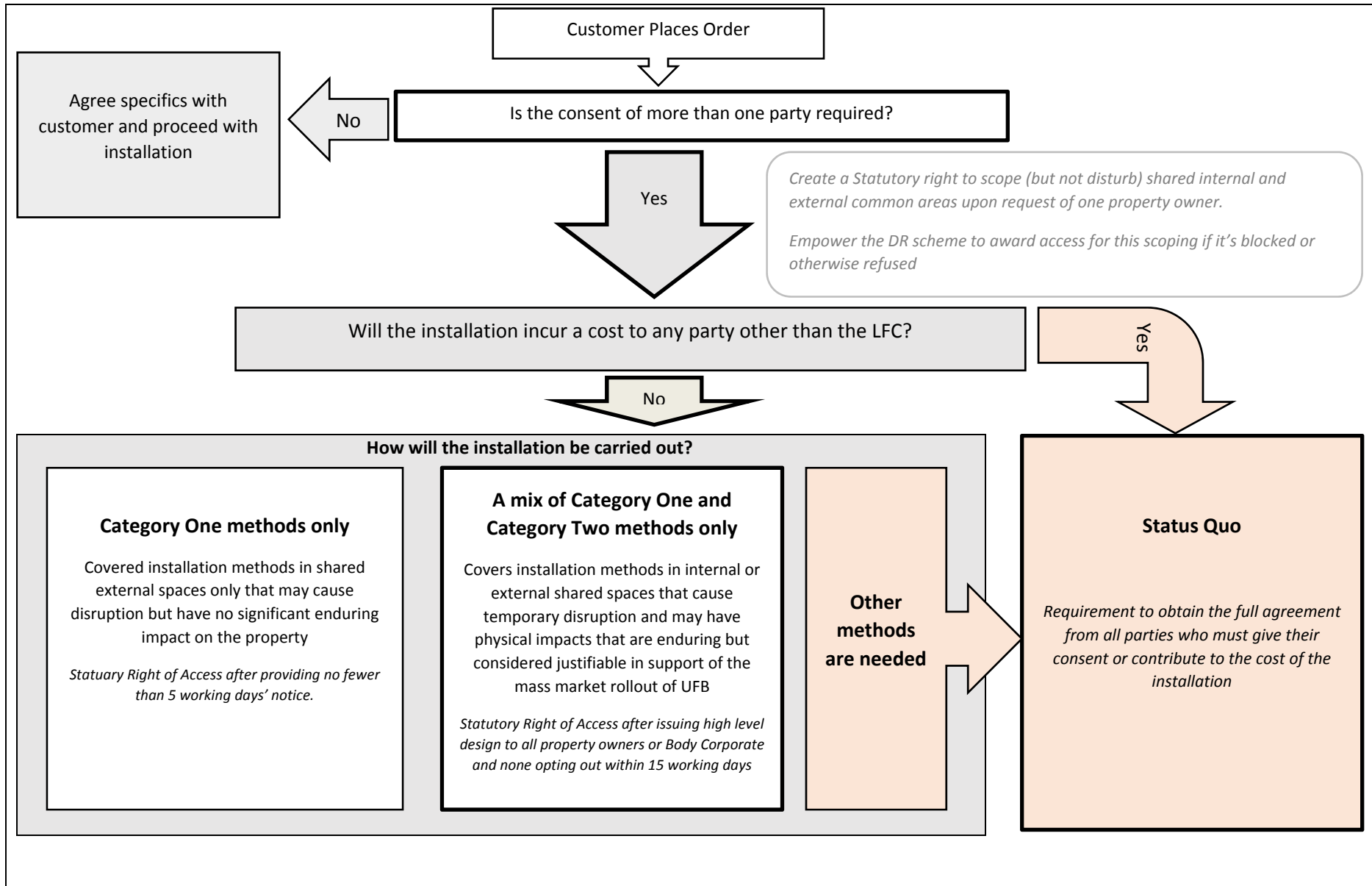
7. Further Comment

- 7.1. Where an installation is completed in stages, the appropriate category will be the combined total of a final installation if it were complete in one stage. That is, if hard trenching of 4 linear meters were involved for the first stage of a right of way, and completion of all properties would, involve a total of 8 linear meters, it cannot be done as two Category Two tranches.
- 7.2. Where access is obtained under the provisions of the Act as suggested, there would be on-going access for the LFC to inspect, maintain and repair the fibre network.

8. Dispute Resolution

- 8.1. The TCF acknowledges that it is appropriate to have a dispute resolution scheme available to end users and the industry for land access and building access consents.
- 8.2. Currently the industry provides two dispute resolutions services: the Telecommunications Dispute Resolution Scheme (TDRS), used for general telecommunications disputes between end users and RSPs; and the MUCs Dispute Resolution Scheme (MDRS) which is related to disputes concerning the process set out for the MUCs regime. Clearly the TCF would prefer that there is no proliferation of dispute resolution schemes for the industry.
- 8.3. RSPs belong to the TDRS. On the other hand, the LFCs belong to the MDRS. The fixed cost of the MUCs scheme is \$100,000 which is funded by the LFCs.
- 8.4. The current MDRS generally complies with the principles set out in the Australian Benchmarks for Industry-based Customer Dispute Resolution Schemes.
- 8.5. One important aspect of the TDRS and the current MDRS is that the TCF contracts with an independent service provider (Fairway) to provide the service. This means that the TCF bears the financial risk associated with changes to the number of participating members. A fully stand-alone scheme would have this risk built into the fixed cost of the scheme, and therefore cost more.

8.6. The TCF is proposing that it would make sense for the current MDRS to be amended consistent with the final provisions in the Act. Amending the existing scheme would allow the costs to remain the same with the same membership. It is already an approved scheme and would require only minor adjustment to fit the proposed Land Access regime above.



Appendix 1: Fibre Installation in a MUC in-building distribution (risers, comms rooms etc.)



MDU FFP Cabinet >32 Customers



BUDI & Verticasa riser cable



Existing access hole and cabling



Use of existing cable trays

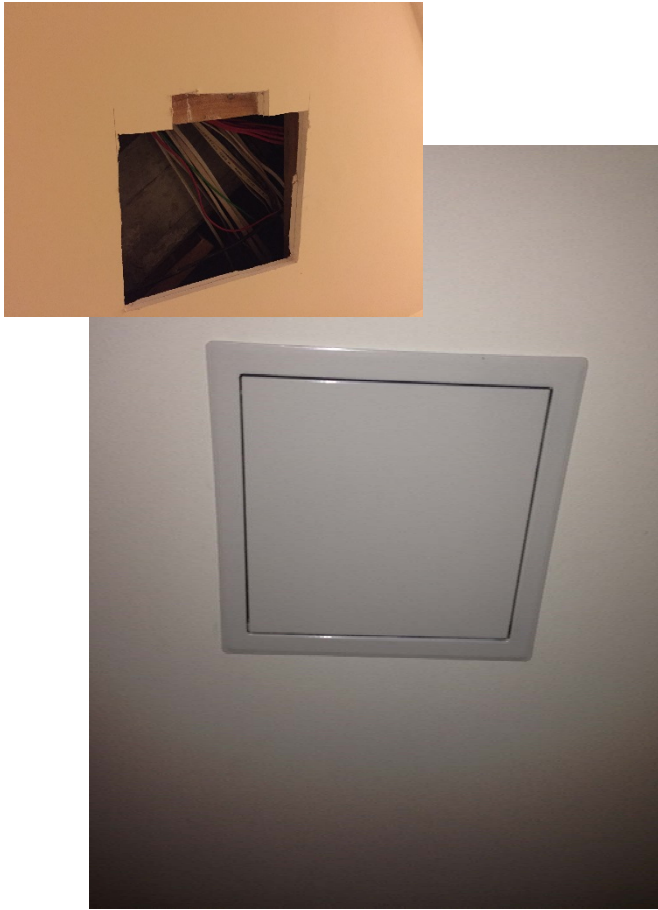


Verticasa riser cable



uPVC pipe and fittings

Appendix 2: Fibre installation in a MUC in-building equipment



Ceiling space access panel



On wall corner capping



Access panel and BUDI



On wall trunking

Appendix 3: Fibre Installation on a MUC in-building equipment

