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House of Representatives Standing Committee on
Infrastructure and Communications
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Submission to the inquiry into the Telecommunications Amendment (Enhancing Community Consultation) Bill 2011

1. Opening statement

This submission is very supportive of Mr Wilkie's Bill. Being currently involved in a battle by my local community to stop the inappropriate siting of mobile phone towers I am very aware of the problems with the current legislative framework. The Committee may be forgiven for thinking the followings already occur, however this is not the case. I believe that the Act needs to be amended to ensure:

- **Proper consultation with communities about proposed developments**
- **Open and transparent planning**
- **Improved and appropriate siting**
- **Proper application of the precautionary principle,** recognising that:

- there are credible indications from well regarded international research and peer reviewed literature that show that exposure at very low levels could be a human and environmental health issue; and that
- there is still a lack of research into the health impact of long-term exposure to electromagnetic radiation from towers, particularly on children who will have a lifetime of exposure at unprecedented levels.

- **Improved complaint handling**

  The TIO are not able to handle community complaints about infrastructure (limited by legislation) and the ACMA won't deal with complaints about high impact facilities.

  The establishment of a single, impartial and empowered, review body is required.

  It is important to recognise that the current self-regulation climate and outdated Federal legislation has a trickle down effect to state and local government leaving them with limited or no power and has resulted in inter-jurisdictional buck-passing and nowhere for communities to go for assistance.

Achieving these four characteristics of proper regulation will also be positive for industry. The best cure for inefficiencies is clear, unambiguous guidelines and certainty. The provision of accurate and up to date documentation to communities and Council should also lead to immediate improvements and efficiencies[1]. As such it is envisaged the proposed changes will assist industry; benefits should flow through improved forward network planning and more efficient roll outs and the avoidance of unnecessary time consuming and costly disputes with communities, about inappropriate siting or poor consultation.

The changes need <u>not</u> unnecessarily fetter industry, slow down roll outs, compromise services, lower spectrum fees to government, or increase costs to consumers!

If embraced by industry rather than resisted or merely given lip-service, efficiencies and savings should result, including proper costing of the social impact of network construction (ie properly costing externalities).

Competition in the mobile telecommunications market is, importantly, largely at the retail end of the market. Consequently arguments competition will be affected by proper regulation point to a distorted infrastructure market and competition in infrastructure due to a lack of standardisation in spectrum use. It is not an excuse for continued weak regulation.

Mobile technology is an important technology in our everyday lives and its important we have the services. It is not a case of wanting the services but not the towers – what is needed is change. The need for services does not negate the critical need to address the long standing problems with the regulatory framework that are causing unnecessary community pain, and is being amplified by large roll outs.

I commend Mr Wilkie's proposed amendments to the committee and urge the committee to take whatever steps it can to resolve the four key issues above, in the legislation.

[1] RTI of Hobart City Council: mobile telecommunications notification documentation - 6 months to July 2011 - from carriers show most of the 18 contained inaccuracies or conflicting information (2011)

2. Overview

The issues the Bill seeks to address are extremely relevant, addressing urgent problems with the current regulation as experienced by my own and many other communities around Australia. The legislative reform proposals are very timely as major infrastructure builds are underway to expand networks for new mobile data technologies and anticipated uptake, as the industry grapples with static voice revenues. It is critical this unprecedented roll out does not entrench and compound the inappropriate and poor siting decisions of the past, and by extension, amplify the negative effect on communities.

Low impact towers (which refers to their "look" - visual impact, not the power of their output) and expansions to existing towers are both currently exempt from Council planning under the Telecommunications Act and can legally be installed against a landowners wishes. Current powers and immunities under the Telecommunications Act mean Carriers can and do install towers against the land owner's wishes[2]. Given the maturity of our national telecommunications infrastructure, nearly 15 years old, there is no compelling national interest argument for affording industry such significant powers and benefits, particularly in the face of the social cost.

The construction of mobile data infrastructure should be firmly based upon proper consultation with all affected parties to a 500m radius from a proposed facility[3], open and transparent planning, and a proper application of the precautionary principle that meets best practice internationally and genuinely avoids community sensitive sites[4]. The community needs the opportunity to appeal decisions when poor siting choices are made. Coercive powers afforded to industry should be removed and balance introduced that gives communities a real say, ensures proper regulation that is actually enforced, monitored and reported on. This includes mobile telecommunications facilities output which is currently woefully under monitored - ARPANSA only surveyed 19 sites Australia wide over 4 years (2007-2011)[5].

I believe that Committee members will only fully appreciate and understand the issues through actual community examples and I have sought to provide some exemplar cases in this submission, although there are so many Australia-wide that it is unfortunately not possible to include them all. The intent of the examples is not to highlight the actions of any individual Carrier, but rather highlight the legislative weaknesses, and consequently the regulation, that underpin the community's concerns.

Communities are not NIMBYs, anti-towers or anti-mobile phones. We all have mobile phones and we all use them and appreciate their convenience. We are simply asking for proper consultation and appropriate siting, and that EMR output is kept to an absolute minimum. Communities are deeply frustrated by the aggressive industry approach to siting

[2] Senator Ludlum: Question on Notice, 2010

[3] ARPANSA EME Reports for proposed sites, show this is the area affected by EMR output

[4] Avoiding community sensitive sites: ACIF Code requirement (clause 5.1.4 (d)) that is routinely ignored by carriers and not enforced by the ACMA

[5] http://www.arpansa.gov.au/RadiationProtection/BaseStationSurvey/index.cfm

and regulations that leave us powerless with nowhere to turn. Poor consultation and poor siting continue to plague us in the absence of any incentive for industry to do otherwise.

3. Our experience

Six months post notification: our community continues to battle an inappropriate mobile phone tower proposal. The work is gruelling and has taken its toll on community members who have worked tirelessly to try and achieve a positive outcome, to work with carriers to find an appropriate workable alternative for Optus and Telstra, and the community alike.

Community members can't understand why it is left to them alone to fight the results of poor regulation by themselves, and why it is we lack an impartial regulator to resolve disputes. The TIO are limited by their own regulations to handling complaints from land owners or occupiers about land access issues only. The ACMA refused to review Optus's self assessment (low impact) which we felt was wrong and was subsequently proven to be the case – the only option open to communities and Council's who want to challenge a self assessment. It is a serious concern that a carrier who has been working with the legislation for nearly 15 years could get it this wrong.

Telstra has, thankfully recently withdrawn, while Optus who say they are reviewing their options, refuse to withdraw from the site despite strong community opposition, Woolworths opposition (the proposed site's anchor tenant), and opposition of the site owner. Communication has not improved: we still have to chase information and make contact for any update, and have not been told to date what other options are being explored. We are left in limbo waiting in a carrier communication black hole of their own making, whilst Christmas is now only 6 weeks away. We are left hoping the carriers will be upright enough to resist notifying the community or Council just before or after Christmas when of us will be pre-occupied or away. There is nothing to stop this practice. I am aware of a community interstate whose Council received notification on Christmas Eve!

As with most communities, our first knowledge about the proposal came in a junk-mail-like "To the Householder" envelope - the letter itself had no carrier logo and was from Aurecon (the planners working for Optus). Extensive door-knocking of neighbours and nearby businesses revealed approximately 25 residents had received notification (a further 15 weren't sure but thought they may have binned it unread thinking it was junk mail. Optus claimed they notified 120 to ACMA when we complained – quite a discrepancy).

The notification read as though the 15.8m high, three panel tower proposed for the middle of our busy, heritage listed residential area (with both residences backing onto the site and multi storey dwellings opposite at a similar elevation to the proposed tower) was a *fait accompli*. Nearby are a number of medical facilities, including a cancer clinic at the foot of the proposed tower, a neurologist within 50m and a two storey primary school perched on a hill nearby. The letter was written in bureaucratese.

Several community members rang Aurecon who told them that they could provide comment if they wished, but that moving a proposal to an alternative site was almost unheard of. In spite of this, our community banded together in response, and large numbers objected, evidenced by a 500+ signature petition, a large number of objection letters, a rally in front of the proposed site and two well attended community meetings.

Timeframes

The letter from Aurecon arrived a couple of weeks before the school holidays (19th May 2011). The notification period closed as the school holidays began (3rd June 2011). This put families with children in a very difficult position as many were unable to give it the attention they wanted to or respond at such a busy time.

The notification letter gave us a bit over two weeks to respond to the proposal – three days longer than the minimum 10 business days stipulated in the ACIF Code. Suddenly we needed to become experts in a complicated raft of regulations and related information: the Telecommunications Act, the ACIF Code[6], the Telecommunications Code of Conduct, the Low Impact Facilities Determination, state planning requirements, council planning requirements, the ARPANSA emission standard, the May 2011 IARC report the WHO based its upgrade of all EMR to class 2B- possibly carcinogenic to humans on, and so on - in order to make an informed decision and response in a short space of time. For those in the community who don't email, they had the added time pressure of having to get a response in the post in time to reach Aurecon in Melbourne - mail takes around 4 business days to reliably reach Melbourne from Hobart.

Consultation

Optus met with a handful of community representatives two weeks after the consultation period closed (17th June 2011). The meeting reaffirmed that Optus were not going to consider community concerns and objections, but were there to state why they were going ahead anyway.

At the meeting, we were finally given a copy of the ARPANSA EME (electromagnetic radiation) report for the site (4 copies). The report showed a 500m radius from the proposed site was affected by the output. We had asked that a mock up of the tower be provided at the meeting. It was provided but did not show the large equipment boxes nearby more than one perspective to give any real sense of the scale of the tower. The tower planned was over twenty metres above ground elevation and would ruin our beautiful heritage area – it would be an eyesore.

We left our meeting feeling frustrated - we had wasted an entire working week morning to attend such a pointless meeting. People had the morning off work and come in good faith, but were bitterly disappointed by Optus's steadfast refusal to entertain the possibility of an alternative solution.

Community request an extension

After the meeting, we requested a further two weeks – Aurecon agreed. Despite our complaints about poor consultation and a large portion of the community who were not notified and so couldn't respond, the time extension was not offered but had to be asked for. Clearly other communities who do not ask would not receive this option. We wanted those in the community who had not been notified to be given the opportunity to respond to the tower proposal in their community.

[6] Communications Alliance: Industry ACIF Code: Deployment of Mobile Phone Network Infrastructure

Such a short response time for proposals unfairly disadvantages communities. We should not have to go cap in hand to ask for an extension and rely on the whim of carriers to say yes or no each time.

Only one community member ever received a reply to their questions but the partial response only arrived the day before the consultation period closed, making it impossible to consult with the broader community on the Carrier's response or to respond in kind.

As far as I am aware, no-one in our community has had a response to their objection to the site proposal, six months later and other questions, for example from the resident of a nearby multi-story property regarding the impact on them, remain unanswered.

Incorrect self assessment by carrier

Under current self regulation, Carriers self-assess a proposed facility's high or low impact status. We disputed Optus's low impact assessment and asked the ACMA for assistance. We were told the ACMA do not make decisions about a proposal's high or low impact status, that it could only be tested legally.

Optus claimed that by removing a light pole and replacing it with a tower (a much broader and taller structure than the existing light, and with EMR emitting panels), and hanging a light fitting back on it, the tower was miraculously a light pole, and therefore low impact. We urged Hobart City Council to review the assessment and they subsequently engaged a QC, who confirmed it was high impact and thus required Council development approval.

Current legislation leaves communities to find carrier discrepancies in assessments themselves, under legislation that is both new to them and complex. Communities are further burdened for having to fight any error legally, in the absence of the regulator or the TIO providing assistance, an expensive option not many could pursue.

This is not acceptable, in any decent regulatory framework there would be a penalty for incorrect application of a framework that the industry has been working with for 15 years. Financial penalties and infringement notices are a necessity to improve proper application of the Act, the ACIF Code and the Ministerial Determination requirements.

Other consultation issues….. Two towers (not one)

At our meeting with Optus, we raised our concern that other carriers could add to the site once the tower was installed and or the site be expanded with new panels by Optus without further consultation or Council approval under the current federal regulations. We were assured there were no plans for other carriers or expansions. We were told that the tower they were installing only had the capacity for the transmitters planned.

We later discovered on a publicly assessable industry site archive[7], that Telstra had well advanced plans for a tower at the site – the report carried Optus and Telstra's logos jointly. Telstra were almost impossible to contact. We were finally able to confirm with Telstra (who did not contact us – contacting them was very difficult), that they wanted to erect a second tower next to Optus's. Although not on the same tower, it was the same site. We found the

[7] www.rfnsa.com.au (AMTA: Australian Mobile Telecommunications Association)

EME report (dated 19th January 2011) the community had been given on 17th June by Optus was incorrect and showed only a third of the EMR output for the two towers (the joint EME Report was dated March 2011).

By this stage, the poor communication, lack of answers, incorrect documentation, lack of will to find a more appropriate site and woeful consultation had undermined community trust in the carriers. Our community consultation amounted to lip service only – added to which, it was based on incorrect and incomplete information (ie: we were to get two towers, not one).

Complaints – nowhere to turn

The TIO turned us away. We discovered the TIO are limited to dealing with infrastructure complaints from proposed site land owners and occupiers only, and only regarding access issues.

We lodged a complaint to the ACMA about the perceived breaches of the industry ACIF Code, however the ACMA rejected our complaint once legal advice was returned that the tower proposal was high impact – despite the complaint being about an actual process which ran to completion under their jurisdiction.

We contacted the Minister's Office, but were told he could not intervene - that we should try the ACMA. We said we already had – we contacted the Minister's Office as a last resort, we had tried every conceivable avenue for assistance without luck.

Limbo

We are now in limbo. The community have made it abundantly clear that the site is inappropriate and repeatedly requested an alternative. Telstra's withdrawal from the site coincided with the formal advice from the tenant (Woolworths) that neither they nor the building owner supported the towers at the site. Optus however, will not withdraw. The physical notice at the site and the RFNSA site notice also remain in place. Optus have said they are revising their plans and site options but we have not been told what that might entail. We are still left to chase Optus for information but very very little is forthcoming. In the meantime, Optus have now completed a nearby cable service pit a few metres from the main optic fibre link that runs down Sandy Bay Road. Optus have said this may or may not be used for connecting backhaul for a tower, as they have yet to finalise their plans. The Council notification for the pit was only a few weeks after the tower notification (Feb-March 2011).

The community has tried valiantly to work with Optus and Telstra but have been left hanging, six months later. There is nothing we can do to get closure and the prolonged battle is very stressful for all community members who are frankly, fed up. The work involved is significant and exhausting. The considerable workload, the constant hounding carriers for information, and the significant financial cost, is grinding people into the ground.

Communities are currently powerless. We hope this bill will restore some overdue balance.

4. Common concerns

The problems faced by our community are common Australia-wide. Below are a few examples to reinforce with the committee the universality of community concerns and poor practices:

Tinderbox Tasmania – a tower site is identified by Telstra. The land owner agrees to the installation and Council receives no objections to the site. Telstra then decide not to proceed with the proposed site but submit plans for a new site much close to Tinderbox residences and the Tinderbox Nature Reserve which is home to the threatened Forty-Spotted Pardalote. Only the four nearest residents are notified. Residents are very unhappy and strongly object to Council and Telstra. It is discovered that the original site that bothered no-one was abandoned in favour of the new site to reduce the cost of installing power lines.

Cost should not be able to be used as reason for avoiding the application of the precautionary principle. In an effort to save cost, the second site even compromised service delivery – it offered inferior coverage[8].

This is a good example where cost is the driver for siting rather than service delivery (ie: coverage) or minimising EMR exposure to the community and the environment. Massive community action was needed to get the old site re-instated.

Hobart City Council – an FOI request for all facility notifications to Hobart City Council for the period January to August 2011, showed most of the 18 sets of documentation provided by carriers had some sort of error or inconsistency with other documentation (eg cover letter didn't match EME plans, EME plans didn't match the industry site archive website[9]) – only a couple seemed to be in accord. As Council are locked out of low impact facility siting processes under Federal legislation, it is not surprising they don't waste time trying to correct errors.

The inconsistencies are an example showing how poor regulation has led to industry taking no care. These sorts of errors and inconsistencies are also consistently found in community documentation. Consultation with Council and communities based on inaccurate information is unacceptable. The poor standard begs the question about who does have the correct information.

Bawley Point NSW – Crown Castle, a tower developer who sub-lease to carriers and maintain their facilities for them, claimed not to be covered by ACIF Code in its submission for a tower. The tower purported to comply with NSW's Complying Development planning regulations for infrastructure - but was actually considerably higher than the 50m permitted (13.8m higher). No EME Report was ever provided to the community. Two months have passed since the community originally pointed out the omission and asked for the report. It still hasn't been provided.

This is another example of where the ACIF Code and the regulations generally, are lacking – the ACIF Code doesn't cover all participants. No care is taken with documentation by the industry because there is no consequence for incorrect assessments against Codes and planning schemes, or where communities are not provided all or accurate information.

[8] Telstra documentation submitted to Kingborough Council, 2011

[9] www.rfnsa.com.au The official industry mobile telecommunications site archive (from 2003).

This example also highlights the importance of regulations uniformly referring to a consistent and adequate "tower" definition in the Federal legislation due to its flow on effect. The height of a tower should be measured from the base to the very top of the structure including header mounts, panels, dishes, antenna, etc.

The current lack of consistency means some are able to deem a facility metres shorter than its actual height, allowing creative Complying Development and low impact assessments, when clearly in reality, they exceed the height limitations.

The effect of the Federal Act is that State Government planning is over-ridden and towers that would normally require Council approval also become subject to the confusing "tower" definition. The limited "tower" definition allows for some high impact towers (which should automatically require Council approval) to pass under the height limits for structures in certain zones thus avoiding planning approval, when in reality they shouldn't – it is an unintended effect that negates the intended Council approval.

Churchable Qld – EME reports provided to the community referenced only one panel, although Telstra subsequently told the community it was for six even though three were stated in the notification letter, to be following by a further nine (12 to 15 panels altogether). The consultation paperwork was far from right. They have now discovered that the NBN Co are planning a facility nearby but the details are hazy and the community have been unable to get the details. Once again, the community is left to chase the carrier repeatedly for information. Optus are advertising developments in the area but the community cannot find out whether co-location is planned. This is an example of the community being poorly informed because there is no consequence to the industry if they do not meet the ACIF Code's intent. The ACIF Code is, sadly, largely aspirational with lots of "should" this and "have regard to" that.

Again, this community are not against a tower being built, but they would like to be properly informed and properly consulted. They want the site to be right from the start. This is not unreasonable in anyone's book.

Bardon Qld – this was a tower proposed to be built on a very small block of private flats sited in a dip between properties. It meant that the proposed panels would emit at close to the level of the nearby houses. The tenants and owners were told they could agree to a lease or refuse, and get the low impact tower anyway[10]. It was also very close to a local primary school. Again, the notification letter came just before the school holidays. The community fought hard to try against Telstra, who took not one backward step, until Bardon took the only option left and spent $20,000 in the tribunal - and won. Prior to legal action, the community had lodged complaints with the TIO and the ACMA but they failed to help. Again, they had nowhere to turn. This unfairly weighted battle dragged on for 12 months. This is an example of poor consultation and poor consideration of community sensitive sites (in contravention of the ACIF Code). Once again, the EME reports provided to the community were wrong.

Thornbury Vic – this community has a high proportion of people of a non-English speaking background but were given no dispensation in the process for the fact that they were non-

[10] Telecommunications Act, Schedule 3:Part 1, Division 1, Clause 1: Powers and Immunities

English speaking (ie no translation of documents, extended timeframes etc). The proposed site was a shop with a residence upstairs. The owner of the lower floor and the lower floor tenant refused permission for the low impact tower proposal and the local community objected strongly to the proposed site. However, this didn't stop the carrier self-issuing a LAAN (Land Access and Activity Notice) to undertake the build anyway (Telecommunications Act, Schedule 3: Powers and Immunities: Part 1, Division 1, Clause 1). Carriers are quite happy to ignore even the wishes of the landowner. Exhausted and utterly disheartened after trying any possible avenue - the ACMA (no help), the TIO (no help), lobbying the carrier by their supportive federal MP, etc – but all to no avail (and after a protracted 12 month battle), the small business owner on the ground floor of the building decided to move.

Warrandyte Vic – This battle went on for over 2 years stretching this community to its absolute limit. 1300 local residents signed a petition against the development location for high impact tower to be built in close proximity to a childcare centre and other family services (community sensitive sites). Complaints to ACMA, the TIO and the Minister achieved nothing. Vodafone did not withdraw and refused to look at alternatives despite the overwhelming opposition to the site in the community. The tower site has finally be overturned, but only as a result of Council refusing to sign a lease for the site - a LAAN can not be issued for a high impact tower.

Gladstone Base Hospital Qld – a tower was built on top of the hospital itself, evidencing no attempt by the carrier to avoid community sensitive locations and in the face of a huge outcry from hospital staff. As an aside, Carriers will often claim that the safest place to be is right under the tower – while this might be theoretically true it is not necessarily true in practice, depending on the topography and nature of the surrounds, as evidence by recent EMR measurements taken at Sandown Park in Tasmania suggesting a hotspot near the base of the tower.

Craignish Qld – this tower is "attached" to a Council water tank. According to the community, the latest design show the tower (over 10m) would be attached to the tank with one 10mm bolt. The community have had the drawings reviewed by an engineer who has advised them the bolt does not offer any structural support for the tower, but acts as an attachment to the tank, that it is really free standing and offered structure stability by the large steel struts that connect it to the new concrete equipment shed a couple of metres away.

The community is highly sceptical about Optus's "low impact" self assessment (under the Telecommunications Low Impact Facilities Determination 1997, if a facility is <u>not free standing</u> but "on an existing public utility structure" – in this case, a water tank, it is "low impact"). The community are now faced with challenging this legally at enormous personal cost, in the absence of any independent review body.

This community objected strongly and like others, tried everything only to discover they were powerless. I understand they have recommending scoping for a more appropriate site that still meets their needs but is not right on top of residences, but to no avail.

The community has spent over $12,000 on legal fees so far in the absence of any other avenue/assistance. Optus have not even returned letters from the community's lawyer.

Again, the ACMA, the TIO and the Minister's office have been unable or unwilling to intervene when contacted for help. No-one will challenge the low impact self assessment. The battle continues, 8 months on.

Lennox Heads NSW – This community objected very strongly to Optus's proposed three low impact towers, to be mounted on large brackets on a Council water tank sandwiched closely between residences 4 metres away. Only four residents received the notification from Optus and despite a lengthy and detailed complaint to the ACMA and written evidence, Optus were not sanctioned. The ACMA's response to this and other complaints about perceived breaches of the ACIF Code was so slow (the battle was over a year), that the towers were in by the time it was formally investigated. Over 100 residents objected to the proposed site to Optus, and complaints about lack of consultation and lack of communication followed to the TIO and the ACMA - but neither could/would help.

By mounting the towers on a water tank, Optus were able to run their development as low impact[11] avoiding all Council approval processes. Ballina Council claim they refused permission for access to their land for these towers. The powers and immunities afforded to carriers under the Telecommunications Act's give carriers the legal ability to install them against their wishes anyway.

This community tried everything they could to try and rally Optus's interest in looking at an alternative, but it fell on deaf ears and their concerns were roundly ignored. The three towers are now up.

Sandown Park, Tas – This tower was constructed in a residential area on the edge of a busy park directly opposite houses and apartments, some double storey - and close to an extremely busy children's playground. The tower site is in a known feeding ground for the threatened Swift Parrot but, despite a report from Biosis recommending the site be referred to the Minister for the Environment, no referral was made. I understand this is a requirement of the Act. The Council sought an indemnity from the Telstra against future health risks but none could be gained (surprising given industry claims that there are no health risks!), subsequently a nearby resident has developed constant tinnitus and had to move.

As I stated above this is only a small sample, I refer committee members to the No Towers Near Schools site map[12] detailing a more comprehensive list of tower battles, over 165.

5. Proper consultation

Consultation footprint

Mobile phone towers emit radiation and are visually intrusive, standing by their very nature above the surrounding features. It is appropriate therefore that more than just the landowner or occupier is notified and as the industry has shown a great deal of inconsistency in their consultation practice it is appropriate to enforce good practice in the Act. A requirement to consult in a 500m radius is sensible as the EME reports show that EMR is emitted a minimum of this distance. The cellular nature of mobile phone networks means that people

[11] Telecommunications (Low Impact Facilities) Determination (1997), Part 7 Item 2

[12] http://www.notowersnearschools.com/othercomm.html

at the margin of a cell may be affected by multiple towers. Lastly, empirical studies, acknowledging that the health debate is still going on, and recent epidemiological studies suggest 500m as the radius of greatest effect on health[13].

EME Reports

EME Reports showing the full exposure in the affected are created by industry when planning towers (at a height of 1.5m) are created routinely by carriers as part of their development planning process for all high or low impact facilities and are attached to the listing for each site on the industry's RFNSA site archive website. Reports provided to the community should be in actual EMR units (eg $mW/m^{2)}$ rather than just as a percentage of what is by international standards a high national standard. In the interests of good communication and proper consultation, I believe these reports should be provided to the community at the point of the notification, and as a matter of course. Proper consultation should mean the community has all the information it needs.

Consultation period

The existing 10 day response period provided to communities is highly inadequate and is not nearly long enough to allow the community to provide an informed response. Mr Wilkie has recommended 30 days and this is a far more reasonable timeframe. Anything shorter will unfairly disadvantage community members and not be representative of a genuine effort to consider community consultation. A shorter period would particularly disadvantage those in isolated locations, the elderly, those with disabilities, health issues or those who need to access translation services.

Open and transparent conduct

Finally, consultation would be greatly enhanced by communities being provided with relevant reports when requested (eg proposed coverage area, coverage blackspot maps, complaint numbers, etc) Current practices suggest siting in a particular location is not chiefly based on cost at the expense of avoiding community sensitive sites in particular.

Ability to influence

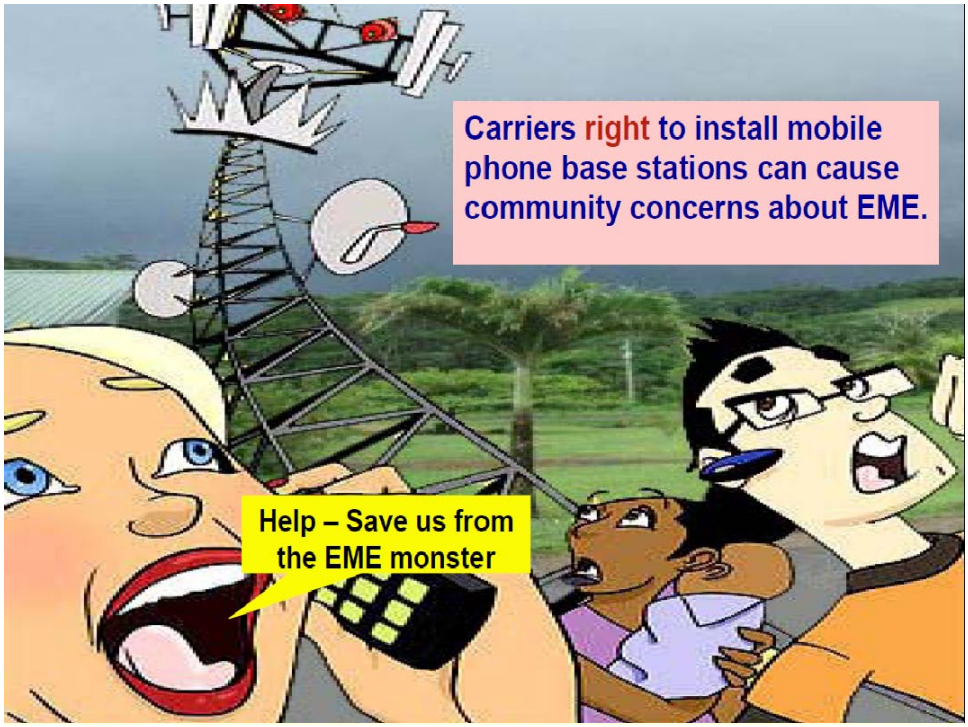
Current consultation is a merely lip service. Objections received by carriers carry no weight and the carrier has no obligation to alter their plans in any way in response. Proper consultation should mean, that not only are communities properly notified and informed about proposals, and given the opportunity to respond, but that their responses have some weight in the consultation process, and must be properly addressed by carriers.

6. Self assessment and self-regulation

Attitude of regulators

The attitude of the ACMA appears to be best described through this cartoon from an ACMA industry training slideshow, that was presented at an industry conference in 2009[14].

[13] *Mortality by neoplasia and cellular telephone base stations in the Belo Horizonte municipality Minas Gerais state, Brazil* : Adilza Dode et al, Science of the Total Environment, 2011, STOTEN-12672 , doi:10.1016/j.scitotenv.2011.05.051



The community are lampooned in a one-sided and offensive manner as hysterical and ignorant, whilst underlining industry's "right" to install. The ACMA have not taken legal action for a breach in 9 years. Annual reports from 2008-2010 show not one single infrastructure related complaint was investigated to completion. Two alone made it to the preliminary investigation stage.

The attitude above, coupled with the extensive and coercive powers afforded to industry under the current legislation, mean it is not surprising industry have come to treat communities concerns as trivial and rather annoying, and their own ACIF Code requirements as some vague guideline.

It is a regulatory climate that has led many communities to complain bitterly about the aggressive pursuit of industry focused needs with no regard for community concerns or community impact.

Right of review

There is currently no right of review for low impact towers for communities and limited rights of review for high impact towers. The ACMAs decisions relating to Facilities Installation Permits (FIPs) are only appealable by the carrier. This is clearly not acceptable and should change.

Landowner between a rock and a hard place

Land owners offered leases (financial inducements), are stuck between taking the cash and being castigated by their community if it is an inappropriate site, or losing the lease

[14] International Telecommunications Union (ITU) Conference 2009

payments and getting the tower anyway (LAANS: low impact towers). Industry is well aware of the bind land owners find themselves in and yet, legislation that allows this to occur persists.

Land Activity Access Notices (LAANs) – "right to install"

Despite industry suggestions to the contrary, LAANS are relatively common. These are self issued notices from carriers to land owners or occupiers who refuse permission for access, to say the carrier intends to install their tower anyway.

This excessive and unreasonable power to install low impact facilities without against land owner and occupier wishes, is afforded to carriers under the Telecommunications Act. Even when LAANs are not issued, the power to issue them over a land owners head naturally influences the land owner's decision. It applies undue pressure.

I understand Hobart City Council were also on the receiving end of a Land Activity Notice recently, when they refused permission for a tower on their land. Thornbury also received a LAAN last year. Four were installed on apartment blocks alone in 2009.

LAANs are not recorded or monitored by the ACMA so exact numbers are hard to ascertain. This self regulated and excessive power should be removed. There is however a place for a permit assessed and issued by the ACMA[15] (ie FIPs) for use by carriers in truly exceptional circumstances, where the application meets the criteria set out in the Act.

The spectrum auction

We are dismayed that AMTA have used the price of spectrum licences as a bargaining chip in the debate over proper regulation, as was warned by Chris Althaus at the industry's Comms Day conference in October, 2011. This argument and others that warn rollouts would halt if proper consultation and appropriate siting were to be required, show industry is happy to hold Government and the community to ransom over commercial considerations[16]. I urge the Committee not to be influenced by these commercial considerations but hold in the front of their mind the goal of resolving long standing community issues.

If the implication of AMTA's quotes is that poor regulation is the trade off for spectrum pricing, then that would be a very poor outcome for the nation. I urge the Committee to value good community outcomes. I firmly believe that the sorts of amendments proposed in Mr Wilkie's Bill, will only enhance the value of spectrum licences by reducing uncertainty, reducing conflict with the community and encouraging proper planning, but also believe properly regulated markets inevitably have a higher value to participants and investors than poorly regulated ones.

Inter-jurisdictional buck-passing

One of the most frustrating aspects of the poor regulatory framework is that the three jurisdictions blame each other for the problems that communities face. Councils blame the

[15] Facilities Installation Permits (FIP): assessed and issued by the ACMA to allow land access for installation of high impact towers, where the land owner refuses permission.

[16] http://www.amta.org.au/articles/AMTA.mobile.tower.bills.could.affect.spectrum.value

Commonwealth and the state planning frameworks, states blame the Commonwealth and the councils and the Commonwealth palms issues off to the states and the councils. The High Court, in the matter of Hutchison 3G vs the City of Mitcham is pretty unequivocal on who has the guiding hand here – the problems of the Telecommunications Act belong to the Commonwealth and it is up to the Federal Government to fix them.

7. The health debate and the precautionary principle

We tend to apply the "weak" precautionary principle in Australia, more commonly known as the precautionary approach, rather than that used by many other countries. The key difference is that in Australia the regulators allow things that might otherwise not go ahead under a true precautionary principle, to go ahead if it is cheaper to do so (ie on the basis of cost), or to realise "service delivery" objectives. This is not really any precaution at all and consequently it appears in the minds of all but the community that the precautionary principle in Australia just means "it's less than the ARPANSA standard"! It is pretty obvious that in that case there is no precautionary principle, the standard has to be applied anyway.

The standard doesn't cover non-thermal effects and because the research isn't in it doesn't cover long-term exposure, particularly involving children (and the indicators that there might be problems aren't just about cancers, there are other health problems potentially caused by EMR). Standard setters suggest that no action would be taken on the level unless a causal mechanism for EMR causing health problems is proven. That is not a satisfactory state of affairs and if we applied that to all cancers many of the precautionary steps we take would be abandoned.

We need a precautionary principle enshrined in the legislation along the lines of: "The Precautionary Principle states when there are indications of possible adverse effects, though they remain uncertain, the risks from doing nothing may be far greater than the risks of taking action to control these exposures. The Precautionary Principle shifts the burden of proof from those suspecting a risk to those who discount it."

Research into tower affects has been flagged as urgent by the WHO for years - but has not yet occurred. Their own fact sheet is 5 years old and has not been updated despite the IARC increasing the risk rating for all EMR (the IARC do not limit it to mobile phones), to "2B: possibly carcinogenic to humans" in May 2011.

In May 2011, the Council of Europe raised serious concerns about the potential impacts of mobile phone towers and the need for proper application of the precautionary approach[17].

8. Australia's standard relative to international best practice

Unlike mobile phones where each person has the opportunity to self manage their exposure to EMR through texting, use of hands free kits, making shorter phone calls, should they chose to, communities including children, living under mobile telecommunications facilities are unconditionally exposed 24x7 (whole body) for decades. Our current generation of children will have a lifetime of exposure at unprecedented levels. In the absence of very long term data or research on children, it is clear Government has a responsibility to ensure emissions are as low as reasonably achievable in line with international best practice.

[17] http://www.assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc11/EDOC12608.htm

Other Countries have much lower EME emission standards than our ARPANSA Standard for mobile telecommunications facilities[18]. This has not stopped these countries from being able to operate a fully functional mobile telecommunications network.

Australia is 100% of the ICNIP Standard. Other countries standards, as a percentage of the ICNIRP Standard are:

Switzerland	1%
Poland	2%
Italy	Less than 20%
Russia	20%
Belgium	25%

Other countries with extremely low EMR Standards for mobile telecommunications include Sweden and Israel.

France (COMOP trials)[19]

The French Government have made a commitment to reducing EMR output from towers significantly. Currently, 17 cities are trialling reduced mobile telecommunications facility output (2010 onwards – still underway) in a variety of terrains and population densities across the country.

Last year, the French Government also legislated that the sale of all mobile phones in France must include a hands free kit, to further reduce community exposure.

As industry argue that the output from their low and high impact towers is often less than 1% of the standard, I encourage Government to reduce our ARPANSA Standard in line with countries who are leading the way (above) – if industry's claims are true, a reduction of this nature would not impact their tower roll outs in any way.

Currently, towers can be constantly expanded and emissions increased (including increasing the power of existing panels) all the way up to 100% of the ARPANSA standard before carriers breach their ACMA licence conditions – and all without community consultation or Council approval.

There are some exceptions to the 1% of the standard claim made by industry. I am aware of a tower in Lennox Heads that has an output of 13.8%. This tower would be illegal in some countries around the world.

9. The ACIF Code – not the great panacea

[18] http://eprints.mdx.ac.uk/133/2/MazarAug08.pdf

[19] http://www.developpement-durable.gouv.fr/IMG/pdf/Rapport_COMOP.pdf

Although this voluntary industry Code is being reviewed (a year in and still going), a large number of the issues raised above are out of scope or simply unresolved by the Code. A community ACIF Code review panel member commented in her submission that the new Draft Code was essentially an information pack.

Only applies to low impact facilities

Some developers not covered (eg Crown Castle)

The ACIF code requirements are drafted in such a way, that is fails to create any legal obligation for industry. Use of phrases such as "must have regard to" not simply "must" undermines the intent of the Code's main tenants: improved consultation and application of the precautionary approach.

The MCF's own guidelines for Councils[20] regarding the interpretation and application of the ACIF Code impress upon Council that carriers have no obligation to amend their consultation plan in response to Council feedback, no obligation to respond to feedback provided to them by Council, or to alter their plans in response to community feedback.

The power to issue LAANs underlines this message. It is well known that the ACIF Code is not enforced and breaches do not result in infringement notices or fines of any sort.

The message is, carriers can effectively do what they like.

10. Summary

Communities are suffering unnecessarily in the face of poor and outdated regulation that give industry unreasonable and coercive powers, and the community none.

No-one is arguing against towers or telecommunications facilities, just against the lack of regulation, poor siting practices, poor consultation and a lack of any community real input.

As technology changes at an ever increasing pace, and towers constantly expand in response, these issues are set to become centre stage. All industries must adapt their practices over time in response to regulatory change and other externalities and the telecommunications industry is no different.

The proposed changes stand to benefit industry and simply serve to legislate principles industry claim they are wholly committed to: community consultation and appropriate siting, Whilst I understand industry will be nervous about any change to such a long standing powerful regulatory framework, the Bill has the opportunity to provide unambiguous guidelines, providing clarity and by reasonable extension, more efficient roll outs with fewer disputes.

I strongly support the bill and thank you for your consideration of my submission.

Anthea Hopkins

11 November 2011

[20] http://www.mcf.amta.org.au/pages/Guidelines.for.Local.Government