QUESTIONS ON NOTICE

Senator FISHER:

If I can put it this way, and perhaps the witnesses might like to answer this on notice:

a) *how do you legislate with whom consultation should be had,*
b) *how it must be done—by letterbox drop, email or phone—and*
c) *when it must be done? What are the time frames?*

I am looking for the ***who, the how and the when in a one-size-fits-all measure****, which is what legislation inevitably is (Proof Committee Hansard, 12 April 2012, p. 10).*

ANSWER:

The Tower Action Group Inc believe the question has three aspects, as indicated by Senator Fisher; the who, how and when of consultation, with regards to the proposed legislation. Each of these will be addressed separately.

WHO … should be consulted?

As indicated in our submission, **we strongly support the distance of 500 metres** as proposed in Item 12 of the Bill.

As explained at the public hearings by Mrs Anthea Hopkins, EME Reports are required to show predicted emissions to a distance of 500 metres. Consequently, this would provide for those that are potentially affected by a tower to be notified and consulted by carriers. Those that should be notified include landowners, residents and occupiers of property within the radius.

While one could argue that this one-size-fits-all measure has different impacts in different areas (urban v regional v rural, for example), we believe that anyone within the 500 metre distance has the right to be notified. The number of people that need to be notified is not the issue here; it is those that are potentially impacted that should be at the centre of the notification and consultation process.

HOW … should notification and consultation be done?

In terms of notification, the basis should be a letter drop including an EME report and links to the RFNSA site. Other media such as radio and the web could be added.

Initially councils must be notified so that they can tell carriers who else, apart from residents, carriers need to contact when they consult.

The important point is that **notification must be direct**. The placing of a notice on the carrier or AMTA website is insufficient notification, as is simply relying on just a notice in the newspaper, as highlighted by Mrs Sue Hetherington (p.7). Newspaper notices are rarely if ever read.

Consultation should be conducted by the carrier, not Council. The way a carrier conducts their consultation must be answerable to ACMA through federal legislation.

In all of this, we believe that regardless of how you inform people directly, consultation should involve meeting with the community directly, where any proposed site is considered by all parties.

WHEN … should the community be consulted?

Consultation must occur before a DA is lodged.

We believe that this consultative process must occur at the beginning of the whole process, and NOT after a Development Application (DA) is submitted (Taroona, TAS) or, as in our case, after a DA has been actually approved; this is, quite clearly, not consultation.

We strongly support the 'at least 30 day' concept, or four working weeks excluding public and school holidays, as an appropriate length of time for this notification period. While a longer time frame would be better still, we feel that this period could provide the balance between community and carrier interests.

Definition

Consultation period = period from notification to close for responses to a carrier.

Senator McKENZIE:

On the local government issues that you raised in your submission, Mr Bullock, but also the general fit for purpose and the contextualisation of the consultation:

a) ***Do we want to give it all to the feds****?*
b) *How do* ***you imagine and envisage the local community consultative process and application of the legislation happening on the ground****, because it is local councils who I see as being in the best place to have the conversation with community and to have control over what happens in this space actually can occur?*
c) ***Would you flesh that out a bit more for me****?*

ANSWER:

In terms of 'giving it all to the feds', while we believe the Federal government should be the ultimate arbiter in ensuring consultation occurs properly, ***we agree that local government are best placed to assess a development application as this is their core business and the development is in their municipality.***

It is important that *both* Federal Government and Local Government have a legislated role.

> The Federal legislation should ensure genuine consultation occurs and that carriers are accountable to ACMA for consultation, site selection (minimising EMR, avoiding sensitive sites) and conduct breaches.
>
> Federal legislation must provide for Local Government development application assessments for **all** towers. Local Government must have a legislated say on whether a tower location is appropriate for a site, under their planning scheme.

A **legislated Code under Federal legislation**, not an industry Code that is only registered by ACMA and unenforceable (ie the ACIF or Comms Alliance Codes), **is urgently needed**.

A legislated Code should set clear minimum consultation, site selection and conduct requirements. ACMA must be provided with the powers to enforce it and issue fines for non-compliance. Only legislated changes of this sort will ensure carriers listen to communities and respond appropriately.

In terms of what it would 'look like' on the ground, the following table and discussion highlights, for us, the

PROCESS	COMMENTS:
CARRIER SUBMITS ITS DEVELOPMENT APPLICATION (DA) 1. Local government must be the first port of call for **<u>all</u>** tower developments. 2. The DA process must occur before any lease is signed 3. A clause in the Act must insure that local governments cannot amend their by-laws to absolve their responsibility to local communities in this regard 4. An accurate site EME report must be placed on the RFNSA site	• There must also be *no distinction between high and low impact towers*; however, we trust this anomaly in the current legislation which will be rectified. • Removing this distinction returns to councils the ability to have a say on local developments and planning within their shire/city • As now occurs in many cases, consultation only begins once a lease has been signed with a willing landlord; this renders the whole process of consultation a farce. This process will eliminate this practice • The EME report must be but on the RFNSA site to provide both council and communities time to consider this aspect of the proposal • A public Notice of Intention to build, as occurs with most other DA's, must be displayed informing the community. This would also allow for the community to inform council in its preparation of its consultation plan below
COUNCIL COMPLETES A CONSULTATION PLAN 1. Consultations ***must*** take place; complying developments must not apply to towers. 2. The council would need to identify a number of issues. These include, but should not be limited to; a) community sensitive locations b) identify relevant stakeholders c) confirm the 500m radius, identifying those that will require notification d) other site issues relevant to individual councils/communities	• This process will allow councils to identify, for carriers, those they need to consult with. • This will make the process more transparent and less open to manipulation by carriers • Council help determine what is community sensitive rather than it being left entirely to carriers

CARRIER UNDERTAKES CONSULTATION PROCESS 1. A 30 day consultation period with communities 2. As objections are raised, they should be published on the RFNSA site 3. On completion of this process, a report on the outcome of the process and objections/letters of support are sent to council	• Consultation would involve real and genuine input and responses to the proposed site • During this process, it could become apparent to carriers that the proposed site may not be appropriate • An intended benefit of this aspect of the process is that the carrier and the community will become mutually aware of a range of potential alternative sites to assist in the process of locating towers in appropriate locations.
CONSULTATION REPORT INFORMS THE DA PROCESS 1. Consultation report, informs the council DA process as to the appropriateness of proposed site of tower 2. Other normal DA processes apply, without exclusions for tower developments, as currently occurs in some States/Councils	• By this stage, if carriers have engaged in genuine consultation, they would have already determined whether their proposed site is appropriate or not • If site is inappropriate, carriers will review siting options • The Consultation process could easily have identified other potential, and more appropriate sites • This should encourage DAs to only to be submitted for appropriate locations and speed up roll outs • However, given the consultation process that would have already occurred, we envisage that objections to the DA process to be minimal. In this way, we believe that the DA process would be smoother for all carriers and actually less expensive in the long run • Council DA decisions (planning only) would be reviewable through each State's Planning Appeals body • Carrier conduct would be accountable to ACMA, and the AAT • As issues are ironed out early in the process, appeals should be very uncommon

Additional costs for carriers will be negligible as a similar process (without accountability) is planned under the new Comms Alliance Code according to industry (public hearing).

If the carriers would engage in genuine, constructive consultation with communities, rather than just notifying communities and then ignoring them, we believe that his process has the potential to reduce costs for carriers while allowing for community input; a sort of win-win situation.

OTHER CHECKS AND BALANCES:

If a community is still unhappy with the site selected, and/or carrier conduct, they should then be *able to make a complaint to an independent government body*, or the ACMA.

This body must be able to investigate complaints with regards to site selection as well as carrier conduct. The Act also needs to include the ability for this body to issue infringement notices for mobile phone infrastructure developments.

When a breach is found to have occurred, ***a report must be made public that states both the nature of the breach and the carrier involved***. This, we believe, will make carriers more accountable and enable the public, including the body responsible for regulating the industry, to identify repeat offenders/offences

Further to this, we believe the **Telecommunications Industry Ombudsman's (TIO)** powers need to be broadened. With regards to infrastructure such as telecommunications towers, those who can make a complaint to the Ombudsman must be more than just the; land owner or lessee, all those impacted by the development must also be allowed to use their service.

A final check/balance that needs to be available is the ability to appeal any TIO/ACMA decision (or equivalent) to the **Administrative Appeals Tribunal**.