Senators,

Thank you for the opportunity to make a submission on the Telecommunications Amendment (Mobile Phone Towers) Bill 2011. Our views are based on the experiences we have encountered with dealing with the laws as they currently stand.

What follows is a brief outline of the situation with regards to our dealings with the company Optus and its proposed siting of a telecommunications tower in extremely close proximity to community sensitive locations, including residential dwellings within 10-15 metres and numerous others within 100m, a swim school on the adjacent property and a child care centre approximately 200m from the site.

We then address each of the items directly, as outlined and explained in the Explanatory Memorandum that accompanies the Bill. In this way we hope that Senators are able to quickly identify the concerns we raise with regards to the current legislation and our support/solutions for specific amendments.

In short, we not only support all amendments proposed in this Bill, but would ask that Senators amend aspects of it to further strengthen the underlying intent of a number of the amendments.

**Brief Summary of the Proposed Optus Tower at 10605 New England Highway, Highfields, Queensland**

On 9 September 2011, a member of the Highfields community discovered accidently that Optus was proposing to develop a 28m tower (25m tower + 3m antennae) on an adjacent property. Upon further investigation by others in the community, it was discovered that Development Approval had been granted by Toowoomba Regional Council (TRC) for this tower in June 2011, three months earlier. A community meeting was quickly convened where it was discovered that no one was even aware that such a facility was even planned for the site let alone approved.

On contacting Optus, it became clear that they believed that they did not have to consult with the community as the development was Code Assessable under the current town planning arrangements. They reiterated the fact that they had development approval and that the tower would be built in early October 2011.

A search of council documents uncovered the Optus Development Application made, in March 2011. An analysis of this document resulted in the production of a 19 page report (subsequently increased to 23 pages) by the community, outlining errors, omissions and inconsistencies in the evidence that Optus had provided to the TRC.

Consequently, a community group, the Tower Action Group Inc (TAG) was formed to coordinate the community response to the actions of Optus and council planning officers. This has involved many meetings both with local councillors, our local MP and Optus itself. In all our dealings with Optus, they have been far from honest and on numerous occasions, deliberately misleading in its attempt to confuse the community.

We have also made an official complaint to the ACMA with regards to Optus' failure to undertake a Precautionary Approach to site selection. However, despite clear errors in the EME Report that Optus submitted, along with conflicting evidence provided by Optus itself, it would seem that Optus has given 'regard' to the issues under the Code.

The Tower Action Group has, as its one aims, to promote the issues surrounding the location of telecommunications Towers in the community, as well as providing support to others in our area who are facing/will face, similar issues to that that have occurred in Highfields. Part of this involves making submissions to Governments, including this submission as well as to the inquiry of a similar Bill, put forward by independent MP Mr Andrew Wilkie, in the House of Representatives

# Detailed Submission on the Telecommunications Amendment (Mobile Phone Towers) Bill 2011.

## Schedule 1– Amendments to the Australian Radiation Protection and Nuclear Safety Act 1998

### Items 1 and 2

**We would support this aspect of the amendment Bill.** For our group, and the Australian community, it makes sense to have RF exposure standards reviewed regularly, taking into account all available evidence that exists in our globalised world. *Making the results of the review public can only improve accountability issues* surrounding the whole Telecommunications industry, and *especially those surrounding the location* of telecommunications facilities

## Schedule 2- Amendments to the Telecommunications Act 1997

### Items 4 and 5

Given that a tower is being constructed to facilitate the use of **antennae, aerials and the like**, we believe **these must be included within the definition of "tower."**

In our case, the actual antennae add 3 metres to the height of a 25 metre tower, or 12%; in the case of smaller towers, this percentage would be even higher. Consequently, the use of the height of just the tower to be constructed is misleading and is used by carriers in attempting to minimise the impact their towers would have on communities.

### Items 6 and 7

**We believe that no 'tower' should never be defined as low impact.**

This is based on both the potential visual impact of towers as well as the potential long term EME impacts. At present, some facilities are deemed low impact based only on the visual aspect. However, *given the unknown long term EME impacts, no facility should be considered low impact.*

### Item 8

**Maintenance of a facility should not include any activity that increase EME radiation.**

Maintenance must refer to actions that maintain the current level of an established facility. Any action that increases the EME radiation levels cannot be considered maintenance but an addition to a facility and must therefore be deemed a new facility and hence require approval through established processes.

## Items 9 and 10

**(See comments under Items 4 and 5, and 8 above)**

## Items 11 and 12

## Code of Practice

### Community Consultation

**We believe that *community notification and consultation needs to be the first part of any process* that carriers undertake in the siting of their telecommunications towers.**

Consequently, *any change to the Code of Practice (**ACIF Code C564: 2004** Deployment of Mobile Phone Network Infrastructure) that enhances community consultation, and increase the accountability of carriers is essential.* Thus, we would support all amendments proposed in these items of the Bill. This is especially the case with regards to complaints that the ACMA can consider and the fact that work must be suspended until complaints are resolved.

**Details and specifics are provided below.**

At present, it would seem that community consultation is only undertaken as a last resort, well after leases have been signed, locations chosen and decisions essentially made; *consultation is presently seen by carriers as just 'one box to be ticked' rather than as a way of actively dealing with and listening to the concerns of local communities.* This is not only our experience but the experience of other communities in which we have been in contact

**We believe that community consultation is essential in the siting of telecommunications facility, especially at sites close to, or potentially close to, community sensitive locations.**

It is local communities that are fully aware of community sensitive sites, far more so than Telecommunication carriers, or their representatives, who "fly in fly out" of an area with no real knowledge of what exists. Some members of our community have even asked whether siting decisions are just desk-top studies, completed using Google Earth or Google Maps.

In our case, there was no community consultation with regards to the siting of the tower in Highfields. The community only began discussing the issue with Optus three months after development approval by the Toowoomba Regional Council; this cannot be classed as consultation!

Given the unknown long-term EME impacts on people, especially young children, we would most strongly support the amendment that work be suspended until any complaint is resolved. We need to get the location of this infrastructure right, not just for our generation but for future generations.

## Items 13 and 14

**We strongly support the distance of 500m and 'at least 30 days' concepts proposed in these amendments.**

## Items 15 to 19

**We strongly support the amendment that the ACMA *must* be satisfied that the precautionary principle *has been* taken into account** in determining the site for a facility **and that the use of the phrase *"have regard" needs to be eliminated* from the ACIF Code of Practice.** We believe that carriers **must** demonstrate how the location of community sensitive locations has influenced their site selection and how it has informed their undertaking of a precautionary approach.

Under the current ACIF Code, carriers only have to show they have given 'regard' to, among other issues, community sensitive locations in undertaking site selection. ***We believe that this aspect of the ACIF Code is being abused by carriers.*** It would seem that, if carriers mention community sensitive locations, then they are deemed to have 'had regard' to such locations and thus have meet their requirements under the Code of Practice.

In our case, no *precautionary approach* had been taken in identifying sensitive locations and, in fact, a number of sensitive locations had been clearly overlooked. A school over 1100m from the proposed tower at Highfields was deemed community sensitive by Optus yet a child care centre 200m away, and residential dwellings located within 10-15m of the proposed site were 'overlooked.' *Clearly there had been no precautionary approach taken to site selection* but it would seem that Optus had given 'regard' to these simply because it had mentioned one community sensitive location that, even given the enhanced distances referred to in these amendments, was quite clearly irrelevant in the siting of the proposed tower. *Clearly the approach taken was not what the Code of Practice, or the community, would deem precautionary.*

**We believe that the ACMA must certify that no alternative sites are technically feasible.** Given that the technical expertise, in most cases, lies with the carriers, it is difficult for communities to argue against the feasibility of sites even when, to the untrained eye, a site would appear unfeasible.

In our case, Optus argued that a number of sites were "too far from the target coverage area", including a site located in the centre of Highfields, and yet when Optus agreed to look for alternative sites, one of the sites they chose was adjacent to one earlier deemed 'too far' from their proposed target area. Given the inconsistencies and errors in the information provided by Optus, we would argue that *this technical information be made publically available so that its accuracy can be verified.*

## Community Sensitive locations

**We believe that the law needs to be strengthened with regards to community sensitive locations.** Locating facilities at *a distance of 200m from such locations is one way* that a precautionary approach can be applied by carriers.

**Not only do we support the amendment that the ACMA should not consider revenue, profit, market share and other commercial interests of the carrier**, ***we would also argue*** that the **ACMA must**, where there is conflict in evidence**, consider the community interest above that of the carriers with regards to the precautionary approach.** This, we would argue, **must also include a definitive list of community sensitive locations** as discussed below.

In our case, we have experienced, what we believe, is a clear case of bias in the decisions made by the ACMA in response to an official complaint by a member of our group.

The carrier concerned has provided two pieces of conflicting evidence with regards to community consultation; one argued that community consultation had occurred at the time its precautionary approach to site selection was undertaken (July 2010) while the other stated that consultation first occurred 14 months later (September 2011). Evidence from the community backed the latter view, and yet ACMA ignored or completely overlooked these two pieces of evidence, coming down in favour of the company. (ie: that it had consulted with the community in 2010.)

**At present, the ACIF Code only gives examples which could be considered as community sensitive and carriers can**, and have in our situation, **simply ignored them**, claiming they do not consider them community sensitive and that they are just possible examples. *There are some facilities which should to be deemed 'community sensitive',* such as schools, child care centres and places where children congregate for long periods. **This list would need to be developed to meet community expectations on what is deemed sensitive.**

**With regards to the definition of precautionary principle**, **we would strenuously argue for the inclusion of the amendment proposed in Item 19.** Clearly the long term scientific evidence surrounding EME is in dispute, as are the short term impacts. To use the lack of full scientific certainty, as carriers now do, as an argument for the lack of need to 'be precautionary' undermines the whole intent of what it means to be precautionary.

## Item 20

**We believe that a means of appeal against a decision of the ACMA is very much needed and needs to be supported in the interests of justice.** At present, short of taking a carrier and the ACMA to court, there appears no real means of appeal against ACMA decisions.

**We also believe that ACMA needs to make public the reasons for its decisions** with regards to complaints made about carriers and the fulfilment of the ACIF Code.

At present we have been given few reasons for the decisions made by ACMA and those that have been provided verbally, are clearly in conflict with the evidence provided by the community.

This, we believe, will make ACMA more accountable to the people it is set up to serve, the people of Australia. Our experience is that ACMA is seen as subservient to the carriers and not the community.

**We also strongly believe that evidence provided to the ACMA by carriers be made publically available so that its credibility can be tested.** Our experience is that we have been made to 'jump through many hoops" just to make an official complaint and yet Optus can simply provide evidence, some of which was clearly contradictory to its own previously provided evidence, and this is just accepted.

Given our comments above, **any amendments that increase the opportunity to appeal decisions made by ACMA need to be taken by this Parliament.**

**We strongly believe that ACMA be given the power to stop and even reverse a siting decision if it is proven that carriers have not appropriately followed the precautionary approach to site selection.** At present, the ACMA cannot do this but merely direct carriers to correct their errors and/or impose financial penalties. Clearly these have not acted as a deterrent to carriers as they merely correct any error made and proceed as if nothing has happened.

In our case, there is was no evidence that an EME report had even been completed at the time Optus supposedly undertook its precautionary approach to site selection (21 July 2010), and yet ACMA merely asked Optus to correct its EME report. This report was completed on 9 August 2010, 3 weeks after the Precautionary Approach to site selection was supposedly undertaken, and yet this inconsistency was not even questioned. Upon further discussion, the ACMA informed our group that Optus had completed an EME Report in September 2011 and that this had satisfied the ACMA. This is despite this new report containing a number of clear errors with regards to the site and including three new antennae from other carriers.

Our experience demonstrates that carriers are treating their obligations with contempt and that the ACMA is not only powerless to stop them, but clearly considers evidence provided by the carriers as 'better' than that of the community.

## Items 21 to 25

Given that telecommunications are listed as a Federal responsibility in Section 52 of our Constitution, **we believe that the Federal parliament needs to be the ultimate arbiter of this industry.** Thus, **we would support the intent of the amendments in Items 21 to 25.**

## Items 26 to 29

**Given our comments above we would also support this amendment**. *We would further argue that it should be the carrier's responsibility to provide these maps in the first instance* and, failing that, the ACMA should request these of the carriers and then make them available.

**We would strongly support the amendment that competition should not be considered as a legitimate argument for not providing information to the public.** This would increase accountability of the carriers with regards to the evidence they provide to the ACMA and would allow for evidence to be verified by communities around the nation.

**We also support the amendment in Item 29.** We believe that the *cumulative effects of EME in the community need to be made available.* At present, all that appears on documentation provided by the carriers are the EME levels of one site only.

## Item 30

We strongly support these amendments but **would further add that local government bodies must make these available to the public on request.**

Prepared by Mr Ian Bullock

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