12 March 2012

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee Members,

Submission in support of Telecommunications Amendment (Mobile Phone Towers) Bill 2011

Summary:

1. **Inappropriate Site Selection**
2. **So-called 'community consultation'**
3. **Tower Emissions and Health Concerns**
4. **ACMA interests, ACIF's ineffectual code and planning issues**
5. **Advanced planning would benefit council and communities**
6. **No effective arena in which to be heard**
7. **Not in the spirit of 'Community Consultation'**

This submission supports the following aspects of the Telecommunications Amendment (Mobile Phone Towers) Bill 2011,

Inappropriate Site Selection

This amendment to the Bill will require the Australian Communications and Media Authority to be satisfied that the precautionary principle is taken into account when the site of a mobile phone tower is determined;

To abide by the precautionary principle all telecommunications carriers, sellers and developers are required not to state or imply that there is no health risk involved with these towers, yet most of them do including ARPANSA, ACMA and many of the telco's. The precautionary principle states that the location of these towers should avoid community sensitive sites, this however is not enforceable as there is no proper regulation and no one is held accountable. It is essential that this legislation define precautionary principle as 'must' rather than 'should' and it must regulate so that ACMA is compelled to enforce the ACIF code. Industry constantly tells us that the precautionary principle is applied because they stay under the ACIF code, but this is not good enough – ACMA needs to take action to ensure that NO damage is done.

Our community of Kioloa/Bawley Point has just finished fighting a proposed 'high impact' 63.8 metre mobile phone tower which was to be constructed within close proximity of residential homes, the closest being only 80m away. The proposed site is private land and although it is zoned rural is within the village boundaries. This area is surrounded by National Park, State Forest and Crown Land and we believe that the proposed tower should have be better placed so that it would not affect residents either with its physical or visual intrusion nor its Electromagnetic Emissions. Telecommunications Industry Code urges community consultation in site selection however, since the telecommunications industry is self-regulating we believe this is an ineffectual code.

So-called 'community consultation'

This amendment to the Bill aims to require certain owners and occupiers of land to be consulted when a mobile phone tower is to be installed;

All community members who reside, work or attend facilities within 500m of a proposed site must be notified prior to the installation of mobile phone towers. This notification must be concluded before any approvals are given or any construction begins to give those notified and their communities enough time to engage with whomever they need to do so as to ascertain the extent to which they will be impacted by the location of such telecommunication towers whether this impact be to their visual amenity, health, environment or community.

Although many Bawley and Kioloa residents as well as our local council, Shoalhaven City Council were opposed to this site, the developer Crown Castle was determined to go ahead with the proposed tower on

this particular site. Our community was being hoodwinked by Crown; while we are aware that a mobile phone tower in our area is inevitable, we were led to believe that, by working with this developer to find an appropriate site we would find a solution that suited everyone. Our local Progress Association formed a Telecommunications Committee who were communicating with Crown Castle to try and assist in locating a suitable site for a telecommunications tower. But while this so-called 'community consultation' was going on, Crown independently approached a non-resident land owner, struck a deal and by using loopholes in NSW State Planning legislation lodged a Complying Development with our local council. It was only by chance that a member of the community noticed the white surveyor's pegs onsite and found the Complying Development lodged on the council's website.

Tower Emissions and Health Concerns

This Bill seeks to amend the *Australian Radiation Protection and Nuclear Safety Act 1998* to require the Radiation Health and Safety Advisory Council to review certain radiofrequency exposure standards every five years, with the first review to be completed within six months of this bill commencing;

At present there is no legislative trigger for ARPANSA to conduct a formal review of EMR standards, ARPANSA have not completed a public review since 2002. Other Standards bodies have legislated review periods which must be adhered to, surely it should also be the case with ARPANSA. These reviews should require ARPANSA to not only look at the EMR emissions from each facility in isolation but the accumulated effect within the community from the myriad of emission devices located there. At present ARPANSA has only measured occasional sites for EMR outputs, in fact over the past 5 years they have measured EMR's at a total of 21 sites and 4 of these sites show emissions at higher than the recommended limit, however when you are looking at a total of some 18,000 plus sites nationwide, to take measurement samples at only .001% of sites is completely inadequate. ARPANSA obviously need to lift their game and apparently the only way to ensure this is to legislate for it.

Our local council, Shoalhaven City Council, had no option but to accept the CD for the tower in accordance with state government legislation (SEPP (Infrastructure) 2007). Although this state legislation states the following,

Clause 116B Complying development certificates—additional conditions.

A complying development certificate for development that is complying development under this Division is subject to the following conditions:

(i) in the case of development that will produce electromagnetic radiation—a report in the format required by the Australian Radiation Protection and Nuclear Safety Agency that shows the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and

(ii) a report showing compliance with the Mobile Phone Networks Code.

An EME report was not included in the documentation received by council even though this tower was to co-locate two sets of telecommunications carriers equipment and even if the estimated emissions from the tower are at the ARPANSA's EMR limit, we believe this limit is far too high and are supported in our belief by eminent health and research professionals worldwide. Community concerns about the long-term potential health impacts of living under towers, particularly for children, are dismissed by the industry. This is despite the recent World Health Organisations rating of tower emissions as "possibly carcinogenic to humans", in May 2011.

ACMA interests, ACIF's ineffectual code and planning issues

The amendments to this Bill should remove the exemption for low-impact facilities from state and local government planning processes and remove the exemption on the application of state and territory laws;

I wholeheartedly support both these two items as clearly, planning process should apply to all telecommunications facilities, including the need for community consultation. Under the ACIF code this does not happen until the process is completed, by then the deals are already done, the leases are already signed and the caveats already placed on the land. What chance then does a community have of reversing inappropriately chosen locations? However these amendments should only apply to low impact mobile telecommunications facilities specifically and should exempt land lines and fibre optic cable.

Our community's fight has been all-consuming, disillusioning and demoralising because of the lack of support and inherent difficulties of a system which seems designed for community failure. Crown Castle claimed in the Complying Development Assessment – PCA (see copy of document below), that as they are not a "Carrier" they are exempt from obligations of the ACIF Code. Regardless, it is clear that this is a telecommunications facility development and therefore it should comply with the Code. Complaints to the Minister for Broadband are referred to "relevant state, territory and local governments". Complaints to the ombudsman are referred to the regulatory body, ACMA. Complaints to ACMA however, are superfluous since telecommunications carriers are self-regulating and have never once been sanctioned in the ACMA's history. Further, ACMA is completely conflicted as it collects substantial revenue through telecommunications carrier licence fees and charges. Or in our case as this is a 'high impact' rather than 'low impact' facility most of the information and advice we received from them was in fact totally incorrect. We eventually felt we are in a very sad black comedy as all roads effectively lead nowhere.

Advanced planning would benefit council and communities

Amendments to this Bill would require carriers to prepare local telecommunications network plans each financial year, for the next five years;

This needs to be introduced and enforced as both councils and the communities must be able to get the full picture. We need to be told how many organisations are going to co-locate on any one tower. These network plans must also include any upgrades that are being looked at in the near future. Telecommunications companies make their plans well in advance and developers will not construct towers if they do not already have an indication from a telco that they are willing to locate their infrastructure on said tower, but councils and communities are constantly being kept in the dark as to these plans, and please the old misnomer of commercial in confidence is just a thinly veiled excuse, the council and community would not be asking for specifics here but general guidelines that all can work to.

No effective arena in which to be heard

By the time communities have endured the drain on time, money and resources to no avail, they are generally sufficiently beaten and give up. It cost our small community of approx 500 in total more than $2,500 in legal fees not to mention time and energy to see off Crown Castle, and if they hadn't made so many mistake on their Complying Development we would now be looking at a very very large tower in the middle of our small seaside village. Very few communities have the considerable resources necessary to appeal to the Supreme Court, which is the only legal avenue remaining. There is no effective arena anywhere which is able to hear let alone act upon a community's concerns, there can never be a classic David and Goliath ending. In our case luckily Crown Castle eventually withdrew their Complying Development due to anomalies within it that were bought to the attention of the Southern Rivers Catchment Management Authority by our community. At the same time both the community and the council lodged complaints with the Building Professionals Board concerning the private certifier who completed the 'non-compliant' Complying Development. The community subsequently had to withdraw its complaint as the BPB will only accept one complaint on any one issue and we decided that the council's complaint would hold more weight. It is now almost 5 months since these complaints were lodged and to date all that has happened is that the BPB has written to the private certifier outlining the complaints and asking him to respond, this is not what I would call a timely response. Attempt by communities to holt this type of action becomes a very long and arduous process and inevitably it is almost impossible to have someone held accountable, there seem to be barriers placed at every step.

Not in the spirit of 'Community Consultation'

Telco's have pushed a demand for telecommunications towers by selling the public a product to which it cannot provide a nationwide service. They then insist that they must improve their services at communities detriment because their customers demand it. It is a vicious circle fed by the telco's commercial greed. This has been happening since the introduction of mobile phones and will continue to happen until these companies are made accountable. I have to ask, how many towers is enough? Telstra made a nett profit in the last financial year of just under 4 billion dollars and Optus made almost 1 billion. Why then is the community asked to bear the cost of inappropriate placement of telecommunications towers, be they high or low impact. Huge towers need to be located well away from the communities that they service and if that means that the telco's must pay to take the electricity supply to the agreed location then so be it. Most other leading industries are required to have a research and development strategy yet the Telecommunications industry in Australia is not required to use its vast financial and intellectual resources

to advance technology towards improvements that could eventually see the reduction in the need for the vast quantity of telecommunications towers that litter our landscape at present, and one has to ask why.

The Kioloa/Bawley Point community has endured more than twelve months of banging our heads against a brick wall in trying to work with Crown Castle in finding an acceptable site for which to locate their telecommunications tower on only to have them play us and our local council for fools by going behind our backs and securing a completely inappropriate site then lodging a CD which allowed them to furtively get approval for their development. In our opinion, this is not consistent with the spirit of 'community consultation' as cited in the Telecommunications Industry Code.

We know we are not unique and that many communities feel completely disempowered by this process. The regulations were originally designed to fast track the beginnings of the mobile phone industry and have not been updated since 1997 even though there has been an explosion of mobile technologies since that time. It is time to really adopt a precautionary approach with the sighting of telecommunications facilities and bring Australia's telecommunications industry regulations and control systems in line with the world's best practice. We firmly support new legislation to give communities a greater say in the installation of mobile phone towers, reduce the amount of high impact facility installations, eliminate self-regulation by telecommunication providers and reduce the ARPANSA standard.

Finally, I recently made a submission to the Chair House of Representatives Standing Committee concerning Federal MP Andrew Wilkie's Telecommunications Bill amendment. This Bill has just been through a public hearing process with the lower house Committee. Unfortunately only industry groups and government regulators were asked to appear at the public hearing, not one of the many community groups that lodged submissions, and there were more than 50, were asked to appear, this is extremely disappointing and is lacking the democratic integrity we would have expected to see of a House Committee inquiry. It is merely one more example of community concern being relegated to the waste heap.

Yours sincerely,

Sharon Adlam
Bawley Point resident

Communications Planning

Proposed Development must meet the relevant provisions of the *Building Code of Australia* (BCA)	YES	Structural certification confirms this
Must pay Section 94 Contribution if applicable.		Shoalhaven Council does not charge this.
(e) in the case of development that is development of a kind to which the Mobile Phone Networks Code applies—must: (i) comply with that Code, and (ii) be designed, installed and operated so that the maximum human exposure levels to radio frequency emissions comply with the Radiation Protection Standard, and	Not Applicable.	Crown Castle is developing the tower and is not subject to the provisions of the ACIF Code
Must be designed and sites to minimise visual impact	YES	
Application for Complying Development Certificate must have consent of Land Owner	YES	