Senate Environment and Communications Legislation Committee

Inquiry into the Telecommunications Amendment (Mobile Phone Towers) Bill 2011

Tower Action Group Inc

Supplementary Submission and

additional Information

(related to Submission 51 and evidence provided to the Public Hearing)

Senators,

The Tower Action Group Inc wish to provide a supplementary submission to the inquiry in order to provide you with additional information that will assist you in clarifying the issues that were raised in the Public Hearings on 12 April 2012.

The submission, and attached evidence, will be centred on the letter Mr Bullock wrote to the Chair of ACMA on 31 January 2012. The facts raised in the letter go to the very core of community concern with the telecommunications industry and its regulators.

This evidence will also repudiate a number of the claims made by industry, and government regulators, and possibly explain the delay in ACMA's response to Mr Bullock's letter. Please note **a copy of this letter was submitted to the inquiry on 12 April 2012.**

In evidence at the Public Hearings on 12 April 2012, Mr Loney, of the ACMA, stated that he:

> "was not actually aware of that letter until Mr Bullock mentioned it this morning. I have made some inquiries at the ACMA since then and I now have a copy of the letter." (Hansard Proof, p.41)

While his further commitment to acknowledge this letter and respond to its contents is welcomed, we would like to make Senators aware of the following, if indeed you are not already aware:

a) This same letter was **tabled, and mentioned in Appendix C: List of Exhibits, in the report of the inquiry into Mr Andrew Wilkie's similar Bill in the House of Representatives**, dated 21 March 2012
b) Mr Loney, and the ACMA, were witnesses at this public inquiry, held on 17 February 2012
c) The letter concerned was able to be found within hours of its reference in a Senate Public Hearing

What Mr Loney, and the ACMA, are asking the Senate to believe is that both he and the ACMA were unaware of the contents of this House of Representatives inquiry and, by implication, its outcome/recommendation.

If you will forgive us, our group fails to understand how, given the above, Mr Loney was unaware of this letter even though the whole of Australia, potentially, was made aware of it in the House of Representatives report. It may, however, explain how the ACMA was able to locate the letter so quickly on 12 April 2012.

We believe that ***the ACMA, and Mr Loney, are treating the Senate with the same disrespect with which they treat the community of Australia.*** In doing so, they have provided Senators with an insight into what communities have to deal with on a constant basis in their dealings with the ACMA, and the telecommunications carriers.

In fact, it would seem that ***the ACMA itself, in their comments and actions before the Senate, may have provided the best evidence to back up many of the claims made by community groups*** surrounding the lack of genuine consultation, regulation and accountability.

We believe that Senators may now better "understand why community groups are a bit concerned about responses" (Hansard Proof, p.41) from the ACMA and the carriers, and why, as Mr Bullock pointed out in the public hearings, the community has lost complete trust in them.

SUPPLEMENTORY SUBMISSION AND ADDITIONAL INFORMATION

BACKGROUND SURROUNDING THE LETTER TO MR. CHRIS CHAPMAN, CHAIR OF A.C.M.A

Following an official complaint to the ACMA, dated 9 November 2011 *(see attached)* concerning irregularities in Optus' undertaking of a Precautionary Approach (PA) to site selection, the ACMA's Ms Megan Wynnik wrote to Mr Bullock on 13 December 2011 *(see attached)*, informing him that:

(a) the **issues raised constituted an official complaint**
(b) preliminary enquiries had been made to determine whether the ACMA, should, *at its discretion*, investigate
(c) the information provided had been reviewed
(d) she (Ms Wynnik) had decided that the ACMA should not investigate the matter
(e) the ACMA will instruct Optus to amend its EME Report to provide further information.

Following a phone conversation with Ms Wynnik, and at her instruction, Mr Bullock wrote to the ACMA on 14 December 2011 (*see attached*) regarding a number of outstanding issues that he believed the ACMA had misunderstood and overlooked in their 'initial' investigation.

Despite further correspondence, both by e-mail and phone, it became apparent that the ACMA had clearly not understood the nature of Mr Bullock's complaint, even at the most basic level.

Consequently, Mr Bullock then wrote to Mr Chapman on 31 January 2012.

ISSUES AND EVIDENCE

FAILURE TO REGULATE/AUDIT EME REPORTS

As indicated by Mr Phillip Mason of the Department of Broadband Communications and the Digital Economy (DBCDE), predictive EME Reports are "one of the things that the carriers are *required to* prepare under the industry code to inform the community" (Hansard Proof, p.49)

This *requirement* is listed under Section 5.2.5 of the ACIF Code - Application of a Precautionary Approach to Infrastructure Design, as "… site EMR assessments **must be made** in accordance with the ARPANSA prediction methodology and report format." (ACIF Code, p.13)

As Senators are now aware, these **EMR reports** (or EME reports) **are only *predictive reports*** of potential Electromagnetic radiation levels from a proposed base station, or tower. Senators are now also aware that ARPANSA rarely completes any checking of these reports. Mr Loney also confirmed that "the ACMA does not normally check the predictive reports…" except, where it would appear allegations are made. (Hansard Proof, p.47)

Attached as evidence are three (3) EMR (or EME) reports for the proposed Optus site at Highfields, Qld. While the issues and problems associated with these are outlined clearly to the ACMA in Mr Bullock's letter of 31 January 2012, a further explanation will make the issue clear for Senators.

1. **Optus undertook its Precautionary Approach to site selection on 21 July 2010** as required under Sections 5.1/5.2 of the ACIF Code. *(The proposed tower was classified as 'High Impact' thus only these Sections of the Code are applicable in this instance.)* As evidence of this, Optus **produced a Precautionary Approach Checklist (PAC).** *(see attached)*
2. As outlined above, **an EMR report is a requirement** of Optus in undertaking its PA
3. Optus stated in its PAC that an "EMR assessment ***has been undertaken*** … The assessment ***has confirmed*** …"
4. The EMR assessment provided was dated 9 August 2010 (*see attached*) – **3 weeks AFTER the PA was apparently undertaken**
5. The EMR assessment provided **DOES NOT APPEAR on the AMTA Radio Frequency National Archive site.**

6. This EMR assessment was **for the NSA Site number 4352010**
   A search of the NSA site reveals that the only EMR report for Site number 4352010 is dated 5 August 2010 and has completely different results for the EMR reported submitted (*see attached*)

7. The proposed Optus tower is supposedly for **NSA Site number *4352011***
   A search of the NSA site reveals that the only EMR report for Site number 4352011 is dated 2 September 2011, ***14 months after the completion of Optus' Precautionary Approach***; this report also has another 3 antennae and numerous other errors (*see attached*)

The evidence provided above, and the letter to ACMA of 31 January 2012, goes to the heart of Senator Fisher's questioning of what checking/auditing the ACMA does of these predictive reports (Hansard Proof, pp.47-49). Clearly, the ACMA "does not normally check the predictive reports…" as Mr Loney states. However, given the evidence provided above, it would seem that ***not even a formal complaint would compel the ACMA to have a detailed check*** of these reports.

FAILURE OF THE ACMA TO REGULATE THE INDUSTRY AND ENFORCE THE ACIF CODE

As part of our supplementary submission, we have also *attached* an e-mail from the ACMA's Ms Wynnik, dated 20 January 2012. This e-mail provides **specific evidence** of the ACMA's failure to regulate the carriers with regard to the ACIF Code. This email states:

> "**In relation to the EME report**, the ACMA ***does not have a copy*** dated 21 July 2010. … ***The ACMA will not be requesting Optus to produce a copy of this report*** because it is satisfied that the site EME assessment has adequately been made." (Emphasis added)

The opening statement is **a clear admission that the carrier has not fulfilled its requirement under Section 5.2.5 of the ACIF Code**.

Given this, the question as to why the ACMA would then not even seek a copy is extremely difficult to understand; to then say that they are satisfied the assessment is adequate defies logic.

In short, **NO EME assessment = Adequate assessment?** Again, **this is incomprehensible**.

This provides further evidence as to the *lack of regulation and accountability* that exists under the current legislative regime. It also provides direct evidence that the *ACMA is failing to regulate* the telecommunications carriers *and enforce the ACIF Code* to any degree whatsoever.

The evidence also *calls into question* Messrs. Althaus and McKenzies' assertions as to the lengths industry goes to in providing EME information on the AMTA National Archive site. It does, however, show that there is very *little auditing* of this database by ARPANSA, or whoever is supposed to be auditing this information; it would seem unclear to us and to the Committee who is actually responsible for auditing this site.

Given our experiences, and the evidence already provided, we believe the real purpose of even producing these 'predictive' reports is unclear. There are a number of reasons for this:

(a) the accuracy of these reports is highly questionable

(b) there appears to be no real checking/auditing of the accuracy of the reports

(c) the industry would never show a predicted EME level above the ARPANSA standard,

(d) once a tower is built, given the evidence provided in the Public Hearing, the actual EME radiation levels is essentially never checked and compared to the predicted levels.

If the purpose of providing these predictive EME reports is to allay community concern, it has not. In fact, given the evidence above, and that provided in the Public Hearing, they actually heighten concerns in the community and further erode community trust in the industry regulator, the ACMA.

A more comprehensive and transparent approach, provided for in the proposed legislation, we feel is the only way to re-establish any community trust in a regulatory regime that has clearly failed.

The above is not unique to our situation. There are many submissions that show similar cause for concern when dealing with the ACMA. We believe that the evidence provided further supports our initial submission that that there needs to be an appeals procedure against ACMA decisions.

THE ACIF CODE AND THE PHRASE … "HAVE REGARD TO" …

Much of our initial submission, evidence in the Public Hearing from Mr Bullock, and from other community groups, centred on the ACIF Code and its phrase "*have regard to*". In a practical sense, this has allowed carriers to simply ignore the legitimate concerns of the community and even government. It provides no compulsion for carriers to actually take account of, and act on, genuine concerns and issues that are raised.

The ACMA is well aware of this phrase and its implication for the industry; it is what makes the ACIF Code essentially unenforceable. It is also the reason why the ACMA does not seem to have ever penalised a carrier for a breach of the Code; ***the phrase "have regard to" means that a carrier can never breach the Code.***

A letter Mr Bullock received from the ACMA, dated 13/12/11 *(see attached)* provides the Committee with an insight into how this phrase works in practice. In this letter, the ACMA states:

> "… that under the Code a carriers obligations include that it must have <u>regard</u> to a range of factors …"

And further:

> "Provided a carrier has had <u>regard</u> to these factors in the selection of a site, then a carrier will have complied with those particular obligations under the Code."

The carriers are aware of this phrase; they have even emphasised it in their correspondence. The letter Mr Bullock received from Optus' Ms Lisa Kelly, dated 12 October 2011 *(see attached)* stresses the importance the carrier places on this phrase *(paragraph 6, page 1)*. The phrase is also used in the Precautionary Approach Checklist.

It is clear that carriers are using this phrase to their advantage and to the disadvantage of communities. Worse still is that the ACMA is aware of this but actually seems to be supportive of its use to avoid enforcing the industry Code.

What has happened is that this phrase has reduced the compliance and consultation issues of the Code to a "take-note-of basis" by the industry and the regulator.

The evidence in both the Public Hearings and community submissions, and as evidenced in the ACMA and Optus letters provided, eludes to the fact that **the ACIF Code is clearly not the panacea that industry would have the Committee believe;** in fact, as long as the phrase "have regard to" remains in the Code, it will continue to be the problem, not the solution.

The removal of the phrase "have regard to" from the self-regulatory Code would only go part of the way to solving the lack of accountability, enforcement and consultation controversies. The incorporation of a similar Code, **under legislation**, is the best way, indeed it would seem the only way, to compel carriers to genuinely consult and act on community concerns. It would also seem that a 'legislated Code' is the only way that a government regulatory body, such as the ACMA, can actively regulate the industry.

In short, we ***must*** move away from a self-regulatory system that provides the telecommunications industry with, *the opportunity to regulate themselves to their satisfaction.*

HEALTH IMPACTS; THE ARGUMENT OF INDUSTRY

We do not wish to delve into the 'health impacts' debate at all as others are more qualified. However, we do wish to make to make the Committee aware of the following issue.

The industry places significant weight on World Health Organisation (WHO) research with regards to the safety of EMR and base stations.

Mr McKenzie, in summarising all of the ATMA's discussion of the health effects in its written submission, quotes the WHO:

> "Considering the very low exposure levels and research results collected ***to date***, there is no convincing scientific evidence that the weak RF signals from base stations and wireless networks cause adverse health effects." *(Emphasis added)* (Hansard Proof, p.13)

In his evidence before the Committee, Mr McKenzie then goes on to state that:

> "So that is a pretty straightforward, clear statement from them, and that is the advice that we would be inclined to follow." (Hansard Proof, p.13)

A quick internet search reveals that **this quote is published by the WHO** in a document titled "Electromagnetic fields and public health", Fact Sheet 304. **Its date of publication? … May 2006!**

Given that this is the '*advice that the ATMA is inclined to follow'*, it would seem that even the industry is relying on research/information that is now nearly 6 years out of date.

For industry to quote and use a 2006 document from the WHO to justify its position with regards to the health implications is not as 'pretty straightforward and clear' as industry would have the Committee believe.

This provides further evidence, if further evidence was needed, as to why the community has lost trust in this industry and why legislation to that proposed is urgently required.

Prepared by Mr Ian Bullock

President – Tower Action Group Inc

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ATTACHED DOCUMENTARY EVIDENCE: (in order referred to in submission)

BACKGROUND SURROUNDING THE LETTER TO MR. CHRIS CHAPMAN, CHAIR OF A.C.M.A

1. Complaint Letter to the ACMA - dated 9 November 2011
2. Letter from the ACMA – dated 13 December 2011
3. Response letter to ACMA – dated 14 December 2011

FAILURE TO REGULATE/AUDIT EME REPORTS

4. Precautionary Approach Checklist (Appendix D of the Development Application to Toowoomba Regional Council)
5. EME Report for NSA Site No 4352010 - dated 9/8/2010 *(submitted as fulfilment of Section 5.2.5 of ACIF Code)*
6. EME Report for **NSA Site No 4352010** - dated 5/8/2010
7. EME Report for **NSA Site No 4352011** - dated 2/9/2011

FAILURE OF THE ACMA TO REGULATE THE INDUSTRY AND ENFORCE THE ACIF CODE

8. E-mail from Megan Wynnik, dated 20/1/2012; *with e-mail chain*

THE ACIF CODE AND THE PHRASE … "HAVE REGARD TO" …

9. Letter from the ACMA – dated 13/12/11 *(See **2.** above)*
10. Letter from Optus (Ms Lisa Kelly) - dated 12 October 2011
11. Precautionary Approach Checklist - *(See **4.** above)*