

## **SUPPLEMENTARY SUBMISSION**

### **Senate Environment and Communications Legislation Committee Telecommunications (Mobile Phone Towers) Bill 2011**

#### **1. ACMA Complaints Handling**

Mr Stanton (from MCF) states: “Back in 2002, when the code came into play, we were seeing something like 140 complaints per annum to the ACMA. In recent years that has hovered around the eight to 10 mark.”

ACMA figures do not support this, even though they only refer to low impact facilities and so under-estimate actual complaints. Complaints are increasing after a lull in construction in between 3G and 4G builds. Carrier behaviour has not improved.

#### **ACMA Annual Reports – Complaints Reporting 2005-2011 (6 yrs)**

Year	Enquiries	Complaints	Proceeded to: <b>Preliminary enquiry</b>	Proceeded to: <b>Formal investigation</b>
2005-2006	61	27	Nil	Nil
2006-2007	59	31	N/A	1
2007-2008	13	6	1	Nil
2008-2009	15	8	1	Nil
2009-2010	48	11	2	Nil
2010-2011	104	13	7	Nil
<b>TOTAL</b>	<b>300</b>	<b>96</b>	<b>11</b>	<b>1</b>

ACMA have reported 96 complaints over 6 years (2005-2011). Of these complaints, only 11 ever reached a “preliminary enquiry” stage. Worse, only 1 of the 96 reached the “formal investigation” stage.

ACMA annual reports for this period fail to identify a single breach for the period. Note again that these are only low impact complaints about deployment of mobile phone network infrastructure.

Feedback from communities would suggest:

- only **written** complaints are recorded as complaints;
- complaints are only registered after contacting the carrier for a formal reply on the matter;
- complaints are only registered if they relate to a low impact tower; and

- complaints are only registered if they allege an ACIF Code breach.

Community groups have identified around 200 tower conflicts in the last couple of years. The Department itself (DBCDE) notes:

“For example, in 2011 around 380 pieces of correspondence were received about proposed radiocommunications facilities or towers at 39 sites, of which 275 pieces of correspondence related to facilities being installed under state or territory and local government processes i.e. they did not relate to activities to which the powers and immunities under Schedule 3 apply.”

Clearly there are hundreds of issues every year, and the ACMA's gross under-reporting allows industry to make the sort of statement that Mr Stanton made.

It is strongly recommended that ACMA:

- record and report all complaints and enquiries, including telephone complaints;

Community members are currently made to traverse a complicated complaints system with numerous barriers to overcome. This is unreasonable and lacks procedural fairness in a regulator's complaints system. A lawyer should not be required to lodge a complaint before it will stand up to investigation. It is not surprising communities think that ACMA is trying to minimise complaints.

- provides an additional easy to use on-line web-portal on their site for lodging complaints;
- publicly list and report suspected breaches;
- automatically investigate allegations of repeat offences and appropriately sanction, ACMA must not continue their practice of simply directing carriers to do better next time, regardless of repeat offences.

## 2. USO

**Mr Mason:** “The practical implication of requiring 30 business days notice for all maintenance and schedule-free [three?] installation activities could be significant both in terms of costs and the carrier's ability to provide reliable services. This may have flow-on effects and require other regulations, such as time frames that apply under the universal service obligation or the customer service guarantee, to be reviewed. ”

Senator Brown stated that he would be amending the bill to ensure that general maintenance and so on would not be inadvertently included. Such

amendments will render the majority of concerns raised by Mr Mason moot. See attachment to our response to questions on notice for a schematic of the extent of the Bill as we understand its intent.

### **3. NBN**

Only 7% of NBN is proposed to be mobile broadband. Considering that Senator Brown is amending the Bill to limit its impact, to suggest that the bill will impact the NBN beyond proper initial siting for mobile broadband infrastructure, stretches credibility.

The bill (amended) could easily translate to smoother roll outs of the wireless component of the NBN network.

### **4. Rural and regional Australia**

As noted above, and in the flowchart attached to our response to questions on notice, there will be negligible effect on rural areas.

The changes proposed in the bill (as per amendments to remove non-EMR emitting low impact facilities like land lines, pay phones, fibre and pits) should deliver industry savings and swifter roll outs.

As wireless networks are deployed, the proposed bill has the ability to lead to improved siting practices, leading to less community disputes and better long term network planning and potential health impact outcomes in the future.

It is envisaged that this will assist Government to meet its goal of closing the digital divide in rural and regional Australia.

### **5. Infrastructure builders – Crown Castle**

Mr Mason's (DBDCE) testimony stated that tower developers such as Crown Castle could not rely on the powers and immunities under the Act unless they were acting as an agent of a licensed carrier. This is not the case with respect to high impact facilities where state planning schemes are not robust enough to provide any protection against carriers gaming the system through use of third parties (eg like Crown Castle) to build infrastructure they have agreements to use. Stronger legislation is required at a federal level so that the protections Mr Mason claims exist are in place universally, not just for low impact facilities.

### **6. ACIF Code**

Mr Loney (ACMA) states that the ACIF code is not a voluntary code because it is registered by the ACMA. The Committee should be clear that this is an industry code written by industry and for industry, and it is, by its wording, not enforceable, and that the ACMA has shown no interest in doing so. Nor does ACMA show any desire to seek to ensure that it can be enforced by using its

existing powers to have the reviewed code significantly altered before registration.

The reviewed code (now the Comms Alliance Code) remains a voluntary industry code, albeit again to be registered by ACMA. The narrow scope of the code (even after review) and its wording mean most of the issues raised by communities remain unresolved and the code remains unenforceable.

## **7. EME reports**

EME reports were canvassed extensively at the Committee hearing. Mr Mason suggests (p.49 of Hansard) that these reports constitute a proactive audit of sites, however EME reports do not show the number of panels at a site, and consequently no-one really knows – the community, council, ARPANSA, ACMA - what physical equipment is on a tower. Dr Martin made much of the fact that he can calculate output from the type of panel installed and yet he has no way of knowing what is installed.

EME reports are predictive according to a mathematical model that does not take account of topography or building elevation and as the Committee heard, they are not audited and they do not account for cumulative exposure.

EME reports rarely identify sensitive sites and frequently contain errors such as wrong addresses. The format and accuracy of EME reports needs review.

Industry's RFNSA site archive [www.rfnsa.com.au](http://www.rfnsa.com.au) is also poorly maintained. This site is intended to offer transparency for communities and list all tower sites, including their EME reports, yet the reports are often missing or incorrectly addressed. Site listings have been often found to be added after consultations and or development application processes are completed. This site is not monitored by ACMA, and as carriers self-manage content, there is no accountability.

## **8. Gas and electricity analogy**

Mr Mason (DBDCE) repeats an oft-repeated analogy about powers afforded to water, gas and electricity providers. These utilities have single infrastructure providers and retailers compete for customers sharing the same infrastructure. Mobile carriers, by contrast, all build their overlapping and duplicated infrastructures in the same areas, encouraged by legislation that perpetuates inefficient infrastructure provision. Mr Mason's analogy sadly highlights the inefficiency of our model, perhaps the NBN will resolve this but in the meantime communities suffer purely because we don't apply the model we apply to water provision to mobile infrastructure as well.

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