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Telecommunications Amendment (Enhancing Community Consultation) Bill 2011

Introduction

1.1 The Telecommunications Amendment (Enhancing Community Consultation) Bill 2011[1] was introduced into the House of Representatives on 19 September 2011 by Mr Andrew Wilkie MP, member for Denison.[2] On 22 September 2011, the bill was referred to the House Standing Committee on Infrastructure and Communications for inquiry.[3]

1.2 The bill proposes 12 amendments to Schedule 3 of the *Telecommunications Act 1997* (the Act), the principal Commonwealth legislation that regulates telecommunications installations.[4] The object of the bill is to expand the requirements of telecommunications carriers to notify and consult affected residents when installing mobile phone towers and other related infrastructure. The bill also aims to restrict the allowable distance between a tower and a site that is regarded as 'community-sensitive' and to limit the size of tower extensions.[5]

1.3 Of the 77 submissions received during the course of the Committee's inquiry, the majority were from individuals either acting in a private

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1 The full text of the bill is at Appendix E.

2 House of Representatives, *Votes and Proceedings*, No. 68, 19 September 2011, p. 916.

3 House of Representatives, *Votes and Proceedings*, No. 71, 22 September 2011, p. 949.

4 The full text of the Act is at <http://www.comlaw.gov.au/Details/C2012C00084>.

5 Mr Andrew Wilkie MP, first reading speech, *House of Representatives Hansard*, 19 September 2011, p. 10430.

capacity or as part of a community group that had formed in opposition to the installation of mobile phone towers. These submissions demonstrated the concerns in the community about the health, environmental and visual amenity impacts of mobile phone towers and the adequacy of the consultation by carriers when installing these facilities.

1.4 Based on the evidence in the submissions however, there is considerable confusion in the community about the separate jurisdiction of the states/territories and the Commonwealth in the regulation of telecommunications installations. The bill will only affect facilities that are regulated by the Act; generally defined as 'low-impact' facilities. This does not include free-standing mobile phone towers, which are the subject of much of the community concern expressed in the submissions. Mr Daryl Quinlivan of the Department of Broadband, Communications and the Digital Economy (DBCDE), stated in this regard that:

> … in our experience the more controversial installations of telecommunications facilities are those involving freestanding towers. They account for the majority of matters that come to our attention. As noted, these are covered by state and territory law and would not, as we understand it, be affected by Mr Wilkie's bill.[6]

1.5 A public hearing was held, where the Committee raised the concerns expressed in many submissions from individuals and organisations, in order to investigate the extent to which these concerns would be addressed by the bill. The bill and explanatory memorandum are included at Appendix E of the report. Details of the submissions and witnesses appearing at the public hearing are provided at Appendices B and D respectively.

1.6 The report considers the existing regulatory framework for telecommunications infrastructure, including requirements for carriers and current codes of practice, before outlining the issues raised in submissions from individuals, community groups, industry and government. These issues include consultation processes with councils and communities, health impacts of electromagnetic radiation, and broader concerns about finding a balance between the impacts of mobile phone towers on communities, and consumer demands for mobile services. In the Committee's view, many of these concerns are not addressed by the bill.

6 Mr Daryl Quinlivan, Deputy Secretary, Department of Broadband, Communications, and the Digital Economy (DBCDE), *Committee Hansard*, 17 February 2012, Canberra, pp. 11-12.

Provisions of the bill

1.7 The 12 provisions of the bill are outlined in the explanatory memorandum as follows:

- Item 1 (clause 1 of Schedule 3, fourth dot point, paragraph (g)) allows for more than one owner of relevant land to be notified by carriers;
- Item 2 (subclause 6(5) of Schedule 3) removes the ability for any kind of tower to be specified under a legislative instrument, such as the *Telecommunications (Low-impact Facilities) Determination 1997*;
- Item 3 (paragraph 6(7)(a) of Schedule 3) limits the specification of extensions to towers under a legislative instrument such as the *Telecommunications (Low-impact Facilities) Determination 1997* to 1 metre, from 5 metres;
- Item 4 (paragraph 7(8)(a) of Schedule 3) means that measurements of towers will include antennae extending from the top of the tower;
- Item 5 (end of subclause 17(1) of Schedule 3) specifies that carriers must notify any owner or occupier of land within 500 metres of an activity under Schedule 3 or Schedule 4 of the Act;
- Item 6 (subclause 17(4) of Schedule 3) expands the time period in which notification must be given before activities commence from 10 business days to 30 business days;
- Item 7 (subparagraph 27(1)(g)(ii) of Schedule 3) modifies the criteria for issue of a facility installation permit (FIP) for proposed facilities near community sensitive sites, mandating that all alternative less sensitive sites must be unfeasible and that any proposed facilities must be at least 100 metres away from any community sensitive site;
- Item 8 (after subclause 27(4) of Schedule 3) disallows the Australian Communications and Media Authority (ACMA) from having regard to commercial interests of carriers when determining if the proposed facility is an important part of the telecommunications network to which it relates;
- Item 9 (after subclause 35(3) of Schedule 3) allows for appeals to be made to the Administrative Appeals Tribunal for review of a decision made by ACMA to issue a facility installation permit;
- Item 10 (paragraph 48(2)(a) of Schedule 3) repeals the requirement that ACMA must have regard to the views of associations which it is satisfied represents carriers;

- Item 11 (end of paragraph 48(2)(b) of Schedule 3) restricts ACMA from considering the legitimate business interests of carriers when those interests relate to competition between carriers; and
- Item 12 (end of paragraph 48(2)(b) of Schedule 3) requires ACMA to consider the impacts of the proposed facility on the public when informing the public about the proposal.[7]

Current regulatory framework

1.8 The regulation of telecommunications infrastructure involves Commonwealth and state legislation (including planning laws), and council development approval processes. The interactions between these different components of the regulatory framework can be complex and often confusing for stakeholders who are not technical experts in this area. The Committee therefore considers that a brief consideration of aspects of the framework might assist in understanding how the concerns of the community and industry, which arose during the course of the inquiry, may be addressed.

1.9 The primary Commonwealth legislation is the *Telecommunications Act 1997*. Mr Quinlivan advised the Committee that:

> The scope of the telecommunications powers and immunities regime was significantly reduced in 1997 to provide state, territory and local governments with a role in the installation of telecommunications infrastructure, particularly major infrastructure, such as freestanding towers.[8]

1.10 The installation of telecommunications facilities is regulated by Schedule 3 of the Act. Mr Quinlivan described the two separate elements of the schedule:

> It provides carriers with land entry powers to inspect land, maintain facilities and install certain types of facilities, most commonly low-impact facilities. Secondly, it provides carriers with immunity from some state and territory laws, including planning laws when carrying out those activities. Carriers have access to these powers and immunities under certain defined circumstances.

7 Telecommunications Amendment (Enhancing Community Consultation) Bill 2011, Explanatory Memorandum.

8 Mr Quinlivan, DBCDE, *Committee Hansard*, 17 February 2012, Canberra, p. 11.

> There are many situations where they are not applicable, and in these circumstances approval for the installation of facilities is the responsibility of state and territory or local governments.[9]

1.11 With regard to the current regulatory framework, Mr Quinlivan stated that:

> The [current] schedule 3 regime seeks to balance the requirements for the telecommunications sector to provide reliable services to the public on demand against public concern about the rollout of some telecommunications infrastructure and other interests.[10]

Definitions of 'low impact' facilities

1.12 As noted above, only certain types of telecommunications facilities are governed by the Act. These include temporary defence facilities and, more commonly, 'low-impact' facilities. Clause 6 of Schedule 3 of the Act, and the *Telecommunications (Low-Impact Facilities) Determination 1997*[11] specify the definition of 'low-impact' facilities which include:

- small radiocommunications dishes and antennae;
- underground cabling and cable pits;
- public payphones; and
- co-located facilities.[12]

1.13 Location (residential, industrial, commercial, rural, or environmentally sensitive area), size and type are also relevant to the determination of a structure as low-impact. For example, the Schedule of the *Telecommunications (Low-impact Facilities) Determination 1997* specifies that to be considered low-impact, panel antennae cannot be more than 2.8 metres long. Omnidirectional antennae are defined as low-impact when up to 4.5 metres long but only if they are located in rural or industrial zones, not in residential zones.[13]

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9 Mr Quinlivan, DBCDE, *Committee Hansard*, 17 February 2012, Canberra, p. 11.

10 Mr Quinlivan, DBCDE, *Committee Hansard*, 17 February 2012, Canberra, p. 11.

11 The text of this legislative instrument can be found at <http://www.comlaw.gov.au/Details/F2004C01082> viewed 13 January 2012.

12 *Telecommunications (Low-impact facilities) Determination 1997*, s. 3.1 and Schedule.

13 *Telecommunications (Low-impact Facilities) Determination 1997*, Schedule.

1.14 No telecommunications facility can be defined as low-impact if the site is in an area of environmental significance; if it meets any of the eight criteria outlined in Section 2.5 of the *Telecommunications (Low-impact Facilities) Determination 1997*.[14]

1.15 Facilities that are *not* low-impact, and therefore *not* governed by the Act include large structures and free-standing mobile phone towers. These structures are subject to state and territory planning regulations, and include:

- designated overhead lines;
- a tower that is not attached to a building;
- a tower attached to a building that is more than 5 metres high;
- an extension to a tower that has previously been extended; and
- an extension to a tower that is more than 5 metres high.[15]

Electromagnetic radiation requirements

1.16 Carriers must also comply with legislation that limits the exposure from telecommunications facilities of electromagnetic radiation (EMR; or EME, electromagnetic energy, terms used interchangeably with regard to non-ionising radiation of the type associated with mobile telecommunications). These requirements are specified in the *Radiocommunications Act 1992*[16] and the following legislative instruments:

- The *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*[17] and the *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2003*[18] which set out the circumstances under which a transmitter may be operated to

14 *Telecommunications (Low-impact Facilities) Determination 1997*, ss. 2.5 and 3.1(2).

15 *Telecommunications (Low-impact Facilities) Determination 1997*, s 1.2; *Telecommunications Act 1997*, Schedule 3, subclauses 6(4), (5) and (7).

16 The full text of this Act is at <http://www.comlaw.gov.au/Details/C2012C00233> viewed 5 February 2012.

17 The text of this legislative instrument can be found at <http://www.comlaw.gov.au/Details/F2005B00255> viewed 7 February 2012.

18 The text of this legislative instrument can be found at <http://www.comlaw.gov.au/Details/F2005B00257> viewed 7 February 2012.

communicate with another station and the conditions regulating human exposure to EMR emitted by a transmitter; and

- the *Radiocommunications (Electromagnetic Radiation - Human Exposure) Standard 2003*[19] which regulates the performance of particular radiocommunications transmitters, to protect the health and safety of persons exposed to electromagnetic radiation from the transmitters.

1.17 Community concerns about EME/EMR levels are canvassed later in this report.

Codes of practice authorised under the Act

1.18 As well as the legislation described above, carriers must comply with conditions in enforceable ministerial and industry codes which supplement the Act. These are outlined below, before consideration of compliance frameworks.

Ministerial code

1.19 Under clause 15 of Schedule 3 of the Act, the Minister may develop a code of practice setting out conditions for carriers when conducting activities, including low-impact installations, under the Act. The current version of this code is the *Telecommunications Code of Practice 1997* (the Ministerial Code), most recently amended in 2002, requiring that carriers:

- ensure as little detriment, damage and inconvenience as practicable is caused;
- act in accordance with good engineering practice;
- protect the safety of persons and property;
- protect the environment;
- notify the owner and occupier of the land at least 10 business days before commencing the installation; and
- make reasonable efforts to consult with, and resolve the objection from, any owner or occupier who makes a written objection.[20]

19 The text of this legislative instrument can be found at <http://www.comlaw.gov.au/Details/F2011C00165> viewed 5 February 2012.

20 The full text of the Ministerial code is at <http://www.comlaw.gov.au/Details/F2004C01081> viewed 16 January 2012.

1.20 The Ministerial Code also specifies the rules under which land owners and occupiers can object to the activities of carriers, including reference of complaints to the Telecommunications Industry Ombudsman (TIO).[21]

Industry codes

1.21 Under the Act, ACMA may register codes of practice that have been developed and submitted by industry.[22] The current list of registered codes is provided at Appendix A of this report.[23] These industry codes supplement the Ministerial Code.

1.22 The registered industry code of most relevance to the bill is the ACIF Code,[24] developed by the Australian Communications Industry Forum.[25] This Code applies to all carriers who install infrastructure used to provide public mobile telecommunications services, and includes directions for telecommunications carriers when deciding where to place a telecommunications facility (eg a mobile phone base station).[26] The ACIF Code also outlines requirements for community consultation, and for notification to local councils where the installation of a facility does not require development approval, and specifies the approaches that carriers must take to minimise EMR exposure.[27]

1.23 The ACIF Code aims to:

- apply a precautionary approach to the deployment of radiocommunications infrastructure;
- provide best practice processes for demonstrating compliance with relevant exposure limits and the protection of the public;

21 Information on the Telecommunications Industry Ombudsman (TIO) is available at <http://www.tio.com.au> viewed 17 January 2012.

22 *Telecommunications Act 1997*, Part 6.

23 Australian Communications and Media Authority (ACMA), Register of Codes, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_2525> viewed 15 March 2012.

24 The Australian Communications Industry Forum (ACIF) Code is also referred to as the *Deployment of Mobile Phone Network Infrastructure Code*, or ACIF 564:2004.

25 The ACIF is now known as Communications Alliance Ltd, and is the peak industry body. Information on Communications Alliance Ltd can be found at <http://www.commsalliance.com.au/> viewed 17 January 2012. The full text of the ACIF Code is at <http://www.acma.gov.au/webwr/telcomm/industry_codes/codes/c564_2004(1).pdf> viewed 16 January 2012.

26 ACMA, Placement of mobile phone towers fact sheet, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_1752> viewed 17 January 2012.

27 *Deployment of Mobile Phone Network Infrastructure Code*, ss. 5, 5.4, 5.6.

- ensure relevant stakeholders are informed and consulted before radiocommunications infrastructure is constructed;
- specify standards for consultation, information availability and presentation;
- consider the impact on the well being of the community, physical or otherwise, of radiocommunications infrastructure; and
- ensure council and community views are incorporated into the radiocommunications infrastructure site selection.[28]

1.24 Carriers must also have regard under the ACIF Code to the fact that a consultation program may not always satisfy all participants or resolve all differences of opinion or values. Under section 5.5 of the ACIF Code, a carrier must have regard to council's views on consultation and use its reasonable endeavours to identify community sensitive locations.

1.25 Regulations designed to minimise exposure to EMR emissions from telecommunications facilities are also specified under the precautionary principle requirements of the ACIF Code.[29] Under these requirements, carriers must have regard to a number of issues including:

- the reason for the installation of the infrastructure, considering coverage, capacity and quality;
- the positioning of antennae to minimise obstruction of radio signals;
- the objective of restricting access to areas where radiofrequency (RF) exposure may exceed limits of the EMR standard; and
- the objective of minimising power whilst meeting service objectives.[30]

1.26 According to the ACIF Code, if the radiocommunications infrastructure is associated with a base station used for the supply of public mobile telecommunications services, site EMR assessments (EME reports) must be made in accordance with the prediction methodology and report format of ARPANSA, the Australian Radiation Protection and Nuclear Safety Agency, the government agency responsible for advice on radiation matters.[31] ACMA may request a copy of such a site EMR estimate, and the carrier must provide this estimate within two weeks.[32] A carrier must also

28 *Deployment of Mobile Phone Network Infrastructure Code*, s. 1.2.
29 *Deployment of Mobile Phone Network Infrastructure Code*, s. 5.2.
30 *Deployment of Mobile Phone Network Infrastructure Code*, s. 5.2.3.
31 *Deployment of Mobile Phone Network Infrastructure Code*, s. 5.2.5.
32 *Deployment of Mobile Phone Network Infrastructure Code*, s. 5.2.6.

notify council of all proposed low RF power infrastructure under its control and also notify any occupiers of residences in close proximity to sites of all proposed low RF power infrastructure and fixed radio links.[33]

1.27 In addition, carriers must:

- demonstrate compliance with the ACMA EME regulations regarding maximum human exposure limits for RF fields;
- take appropriate measures to restrict general public access to RF hazard areas; and
- ensure warning signs are in place for each RF hazard area so that they are clearly visible.[34]

1.28 In assessing whether these measures are appropriate, the carrier must have regard to:

- the kinds of people who may have access to the area;
- the need for physical barriers;
- relevant occupational health and safety requirements;
- the views of the property owner;
- any site changes that have been made; and
- any other matter which may be relevant to ensure site safety with regards to EMR.[35]

Revised industry code

1.29 In its submission to this inquiry, Communications Alliance Ltd outlines the development of a revised industry code,[36] submitted to ACMA on 10 February 2012.[37] If approved, it will replace the current ACIF Code with effect from 1 July 2012.[38] The object of the revised industry code is to

33 *Deployment of Mobile Phone Network Infrastructure Code*, s. 5.3.

34 *Deployment of Mobile Phone Network Infrastructure Code*, s. 5.7.

35 *Deployment of Mobile Phone Network Infrastructure Code*, s. 5.7.5.

36 The revised industry code is known as the *Mobile Phone Base Station Deployment Code*, C564:2011; the full text is available at <http://www.commsalliance.com.au/__data/assets/pdf_file/0018/32634/C564_2011.pdf> viewed 10 February 2012.

37 Mr Mark Loney, Acting General Manager, Communications Infrastructure Division, ACMA, *Committee Hansard*, 17 February 2012, Canberra, p. 18.

38 Communications Alliance Ltd, *Submission 55*, p. 4.

significantly improve the level of community and local council consultation by carriers, including through:

- improved consultation plans to be 'fit for purpose', requiring carriers to develop consultation plans for new proposals;
- a new community consultation web portal for new base stations providing significant improvement to information, transparency and access;
- an extended time frame for councils to review consultation plans (from 5 to 10 business days);
- an extended time frame for community consultation and feedback (from 10 to 15 business days);
- giving additional time for community response if required (an additional 5 days);
- regard to public and school holidays and that appropriate extensions of time are provided for consultation during these periods;
- improved and clearer information letters and signage which carriers will use when notifying and consulting with local councils and the community;
- up-to-date EMR health and safety information;
- the use of reports and signage in keeping with the current and relevant standards;
- a new Communications Alliance Ltd information portal to be updated with the publishing of the revised industry code; and
- the online availability of consultation reports.[39]

1.30 In evidence to the Committee at the public hearing, Mr John Stanton, CEO of Communications Alliance Ltd stated that:

> It is a good code in its current form and an even better code in its revised form. When the code was first introduced … we were seeing—or the ACMA, rather, was seeing—something like 140 complaints per annum about the deployment of new mobile base stations. In the last couple of years that has ranged around eight to 10—so a dramatic decrease in the level of formal complaints. We would say that bears some testimony to the effectiveness of the code and the compliance with it by carriers.

39 Communications Alliance Ltd, *Submission 55*, p. 3.

> It is a code that requires carriers to take account of the concerns of all interested stakeholders when they are selecting sites.[40]

1.31 The Australian Local Government Association (ALGA) approves of the revised industry code, noting that '[e]mbedding the need for consultation in the Code is a welcome improvement.'[41] Consultation was a common theme in many submissions to the inquiry. Further consideration of the impact of the revised industry code in this area is provided later in this report.

Compliance and the role of ACMA

1.32 ACMA is the Commonwealth agency responsible for the regulation of broadcasting, the internet, radiocommunications and telecommunications, and for the enforcement of compliance with the provisions of the legislation and codes described above.[42] Mr Mark Loney, Acting General Manager of the Communications Infrastructure Division at ACMA, described its jurisdictional limits as follows:

> Where it is a development activity occurring under state or territory approval, either through the local council process or through what some states have set up which they call the complying development arrangements, ACMA has no role.[43]

1.33 ACMA can issue formal warnings and directions to carriers to comply with the provisions of the Act but does not have powers to rule whether a facility is low-impact or to evaluate the merits of a particular site.[44] ACMA can only investigate complaints against carriers that relate to a contravention of the ACIF Code.[45]

1.34 If a carrier is deemed to be non-compliant with the ACIF Code by ACMA, a formal warning or direction can be issued. If this is breached, ACMA can refer the matter to the Federal Court, which may result in the carrier

40 Mr John Stanton, CEO, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 32.

41 Australian Local Government Association (ALGA), *Submission 76*, p. 3.

42 Information on ACMA is available at <http://www.acma.gov.au> viewed 15 January 2012.

43 Mr Loney, ACMA, *Committee Hansard*, 17 February 2012, Canberra, p. 13.

44 ACMA, Legislation & regulation, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_2889> viewed 14 November 2011.

45 ACMA, Making a complaint, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_1961> viewed 17 January 2012.

receiving financial penalties of up to $250,000 per breach.[46] As Mr Chris Cheah, an Authority Member at ACMA, explained:

> The presumption in the legislation is that industry will comply. If they do not comply, we can give them a direction to comply with the code. Once again, from that point on, if there are any further breaches of the code, you can then go straight to court. We, and the industry, take the code process very seriously. Essentially the industry regards it as being enforceable because they know ultimately breaches of it can end up in court.[47]

1.35 ACMA also emphasises however that upheld complaints will not necessarily result in a site change for a telecommunications facility and that it cannot issue an injunction to stop work or transmission at a site on the basis of a contravention of the ACIF Code.[48]

Issues arising from evidence

General observations

1.36 As noted at the outset, issues concerning the installation of mobile telecommunications facilities are the subject of concern in communities across Australia. As noted from the above consideration of the legislative framework however, there is evident confusion as to the ability of the bill to address the concerns raised in many of the submissions. In a supplementary submission to the inquiry, DBCDE provided the following assessment of site-specific concerns provided in submissions from individuals and community groups:

> There were 26 submissions in relation to specific towers. The amendments in the Bill would not affect the installation of such towers as far as we can determine.
>
> - 6 submissions in relation to Bicton, WA
> - 5 submissions in relation to Bawley Point, NSW
> - 4 submissions in relation to Currumbin Valley, Qld

46 ACMA, Making a complaint, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_1961> viewed 18 January 2012.

47 Mr Chris Cheah, Authority Member, ACMA, *Committee Hansard*, 17 February 2012, Canberra, p. 17.

48 ACMA, Making a complaint, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_1961> viewed 18 January 2012.

- 2 submissions in relation to Warrandyte, Vic
- 2 submissions in relation to Brighton, Qld
- 2 submissions in relation to Tinderbox, Tas
- 2 submissions in relation to towers at unknown sites (not low-impact as submissions identified that development applications had been submitted to the council)
- 1 submission in relation to Highfields, Qld
- 1 submission in relation to Clunes, NSW
- 1 submission in relation to Gawler, SA

There were 22 submissions in relation to specific low-impact facilities.

- 8 submissions in relation to Bardon/Rainworth, Qld
- 6 submissions in relation to Sandy Bay, Tas
- 3 submissions in relation to Lennox Head, NSW
- 1 submission in relation to Berowra Heights, NSW
- 1 submission in relation to Summer Hill, NSW
- 1 submission in relation to Mt Hawthorne, WA
- 1 submission in relation to Double Bay, NSW
- 1 submission in relation to Ballina, NSW.[49]

1.37 Discussion at the public hearing focused on many of these site-specific examples, and the frustration felt by community members regarding definitions of low and high-impact sites, in terms of visual amenity, and EME/EMR exposure levels. Additional concerns related to consultation and notification processes.

1.38 All of the industry submissions to this inquiry oppose the bill on the basis that the consultation framework for low-impact facilities is already comprehensive and enforceable under the Act through the mandatory ACIF Code. In evidence to the Committee at the public hearing, Mr Stanton of Communications Alliance Ltd stated that:

> … the legislation that is being considered here does have the potential to be enormously disruptive to consumers and to business alike, in our view. Unfortunately, we feel it would do so without actually returning material benefits to consumers. While one might contemplate putting up with disruption or additional costs if there are demonstrable benefits flowing from that, we do not think that is the case in this circumstance. Furthermore, we believe that the proposed legislation is unnecessary because there

49 DBCDE, *Submission 61.1.*

> is adequate protection being provided to the rights of consumers under the code that is operated by Communications Alliance.[50]

1.39 Further opposition to the bill is based on the claim that there will be significant additional costs imposed on carriers, and serious limitations placed on their ability to meet future mobile network service demands. The Committee was advised that many millions of additional notifications would be required for the continuing routine maintenance and upgrading work currently allowable under the Act; amendments proposed by the bill would significantly delay these activities.

1.40 As ALGA notes in its submission:

> The ongoing controversy surrounding this [extensions to existing towers] issue demonstrates the level of community concern and is damaging to both carriers and local communities. It suggests this issue requires further clarity and a better mechanism for communities to understand developments, their impacts and their consequences, as well as the need for a fair and reasonable process of appeal where matters cannot be resolved through standard processes.[51]

Notification and consultation

1.41 Inadequate notification, an insufficient time frame within which to raise objections, and the unwillingness of carriers to engage with the community or local council were common themes emerging from submissions. These criticisms referred to both low-impact facilities, and those which do not satisfy the low-impact determination. In some cases, the submissions did not specify the type of facility. While the Committee acknowledges that the specific cases of high-impact facilities would not be addressed by the bill, the issues of consultation and notification remain valid. People are clearly frustrated by the lack of engagement with their concerns. This frustration is complicated by the way that elements under the current Act and codes are defined; not only in terms of high and low-impact, but visual amenity. Concerns were expressed in several submissions about the lack of an explicit definition of 'community sensitive sites' (such as schools and retirement homes) in the current

50 Mr Stanton, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 32.

51 ALGA, *Submission 76*, p. 3.

regulatory framework and the need to address this in any future changes to the legislation or the ACIF Code.[52]

Community views

1.42 Among the submissions that discussed low-impact facilities, the recent installation by Optus of a low-impact mobile phone facility on a water tower adjacent to a residential area in Lennox Head, New South Wales was the subject of three submissions.[53] One of the affected residents reported that these towers are currently six metres from his home.[54] These submissions claim that proper notification was not given to residents, in contravention of the ACIF Code, and that objections to ACMA and the TIO were not given proper consideration or responded to in a timely manner.

1.43 A submission from the Summer Hill Action Group states that Telstra failed to properly notify and consult residents in relation to a planned low-impact facility at a residential address in Summer Hill, New South Wales.[55] Notification issues were also raised by Mr Andrew Fraser MP, the Member for Mount Coot-tha in the Queensland Parliament. Mr Fraser explains that letters sent to residents in Rainworth, Queensland, to inform them of a proposed mobile phone tower were discarded as junk mail by at least one householder, as they were addressed 'to the occupier', and sent from the contractor and not from Telstra.[56]

1.44 The high-impact towers cited in these submissions include a 34 metre tower in Warrandyte, Victoria, proposed by Vodafone, and reportedly initially approved by the local council over the objections of 1300 residents.[57] A submission from the Telecommunications Tower Committee Currumbin Valley describes an unsuccessful application by Telstra to the Gold Coast City Council Planning Department to build a high-impact tower and criticises the lack of notification given to residents of this proposal.[58]

52 Ms Anna Castellano, *Submission 13*; Tower Action Group Inc., *Submission 16,* p. 2; No Towers Near Schools, *Submission 34*, p. [1]; Ms Anne Tredenick, *Submission 40,* p. 2; Ms Sandra Boland, *Submission 47*, p. [1].

53 Mr Rob Godwin, *Submission 6*; Ms Jacqui Godwin, *Submission 12*; Worried Householders Action Against Tower, *Submission 38*.

54 Mr Rob Godwin, *Submission 6*, p. [3].

55 Summer Hill Action Group, *Submission 28*, pp. 4-6.

56 Mr Andrew Fraser MP, *Submission 35*, pp. [1]-[2].

57 Ms Michelle Pini, *Submission 1*, pp. 1-2.

58 Telecommunications Tower Committee Currumbin Valley, *Submission 7,* p. [2].

1.45 The Tower Action Group Inc. from Toowoomba, Queensland, criticises the level of notification provided by Optus of its council development application (DA) to build a base station and suggests that the carrier was unwilling to deal with the community.[59] The Residents Opposed to Optus Tower in Clunes outline ongoing objections to the planned construction of a 40 metre tower in Clunes, New South Wales; while supporting the bill, the submission is critical of a lack of provisions to compel the carrier to address residents' concerns or to empower local councils to raise concerns or express opinions.[60]

1.46 In a submission from Ms Sharon Adlam of Bawley Point, New South Wales, Crown Castle is criticised for ignoring the wishes of the community and those of Shoalhaven City Council in proposing the construction of a 63.8 metre tower close to a residential area.[61] Ms Adlam describes the ACIF Code as ineffectual and expresses concerns that communities cannot effectively object to tower installations.[62]

1.47 In a further submission describing a high-impact tower proposal by Telstra in Tinderbox, Tasmania, the ACIF Code is also criticised for not providing sufficient protection to communities.[63]

Local government views

1.48 Ballina Shire Council states in its submission that the concerns of councils and their communities in relation to low-impact facilities must only be considered by carriers during the consultation process, and that ACMA and the TIO have very little power to intervene when a carrier and the community are unable to reach a mutually acceptable outcome.[64]

1.49 Tony Piccolo MP, Member for Light in the Parliament of South Australia, suggests in his submission that the reluctance of many carriers to engage in consultations with councils regarding tower installations stems from the many months of preplanning that will already have taken place for the site in question.[65] Mr Piccolo suggests that collaborative joint planning between councils and carriers is essential.[66]

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59 Tower Action Group Inc., *Submission 16*, pp. 1-2.

60 Residents Opposed to Optus Tower in Clunes, *Submission 29*, pp. [1]-[2].

61 Ms Sharon Adlam, *Submission 56*.

62 Ms Sharon Adlam, *Submission 56,* p. [2].

63 Dr Jason Whitehead & Dr Fiona Taylor, *Submission 37*, pp. 3-4.

64 Ballina Shire Council, *Submission 51*.

65 Mr Tony Piccolo MP, *Submission 52*, p. [3].

66 Mr Tony Piccolo MP, *Submission 52*, p. [4].

1.50 The submission from ALGA notes that the revised industry code:

> … is designed to allow greater consultation with, and participation by, councils and the community in the decisions made by carriers when deploying mobile base stations and to provide greater transparency in planning, siting, installing and operating the base stations … The increased obligation by carriers under the Code to consult with local councils and the community, increased transparency in the processes and the obligation for carriers to adopt a precautionary approach, are welcomed by local government.[67]

Industry views

1.51 The Committee notes that while processes used by industry were far from perfect, significant efforts had been made to improve consultation, standards for required consultation are comparatively high, and that the revised industry code, if introduced, should go some way to extending improvements. Industry raised concerns about increased costs imposed by the bill, and its impacts on meeting consumer obligations.

Consultation

1.52 The Australian Mobile Telecommunications Association (AMTA) states in its submission that the level of consultation under the ACIF Code is far higher than that under local council DA processes. This submission presents statistics which suggest that an average of 89 stakeholders are notified for a new site as part of the ACIF Code consultation process compared with 18 stakeholders for a council DA process.[68] AMTA notes however that:

> We are not going to stand here and say that we have got it right all of the time—clearly, we have not. It is a learning process. The gradual reduction—dramatic in many respects—of the level of concern in the community has been a reflection of our learning. It is in nobody's interest—least of all the industry's—to have staunch opposition to the deployment of infrastructure in the community.

67 ALGA, *Submission 76*, pp. 2-3.

68 Australian Mobile Telecommunications Authority (AMTA), *Submission 67*, pp. 21-22. Information was provided by the Mobile Carriers Forum, a division of AMTA that represents the three mobile phone carriers in Australia, namely Telstra, Optus and Vodafone Hutchison Australia (VHA). Information on the Mobile Carriers Forum is available at <http://www.mcf.amta.org.au/> viewed 20 January 2012.

> Having said that, it is the community itself that is demanding the service. When contentious situations arise, the carriers are responsive. If an air of arrogance is perceived, we are at pains to try, through the code and our direct contact with the community, to eliminate that.[69]

1.53 The Committee was interested to hear about procedures for site selection and community engagement. Mr Stanton of Communications Alliance Ltd informed the Committee that:

> The intention is that for a new site, once a carrier has started the process of selecting a site, it has to develop procedures for its site selection and comply with them. It requires the carrier to have regard to, as part of these procedures, the 14 factors. They include the minimisation of the EMR to the public, the likelihood of a community-sensitive area being involved and the object of avoiding community-sensitive locations …
>
> One of the other areas of transparency that is useful here is that the carrier is actually required to show the community all the other sites that it had considered and why it hit upon the one that it chose. Often that helps to show that the alternatives were not necessarily wonderful from some people's perspective, and it provides a rationale as to why this site makes the most sense, in terms of the network utility minimising the EMR and providing an efficient service.[70]

Notifications and other practical impacts

1.54 Submissions from the industry peak body, AMTA,[71] and Telstra raise concerns about the increased notification period in the bill from 10 to 30 business days. These submissions state that most activities conducted by carriers under Schedule 3 are required to meet customer demand or carry out standard maintenance and would be significantly impeded by this provision.[72]

1.55 Telstra states in its submission that it conducts about 200,000 low-impact telecommunications installation activities each year and that the

69 Mr Chris Althaus, CEO, AMTA, *Committee Hansard*, 17 February 2012, Canberra, p. 4.

70 Mr Stanton, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 37.

71 Information on AMTA is available at <http://www.amta.org.au/pages/About.AMTA> viewed 20 January 2012.

72 AMTA, *Submission 67*, p. 30; Telstra Corporation Limited, *Submission 46*, p. 4 and Annexure 1, p. 13.

requirement in the bill to notify all occupiers of land within 500 metres will necessitate 8 million extra notices per annum at a cost of $2 billion ($250 per notice).[73] Telstra further contends in its submission that although community consultation plays an important role for some of its low-impact installations, it is not necessary or even sought for the vast majority of these activities.[74]

1.56 Mr Stanton expressed the view at the public hearing that:

> Those who have an interest in the proposal will very often be many more metres than 500 away from it …
>
> The proposal in the bill really does not make a lot of sense. It would … impose the creation of more than eight million additional notices per annum just for one carrier … without necessarily hitting all of those who are in the zone of interest.[75]

1.57 The Committee was advised that a further practical impact of the bill was the potential for the increased consultation period to affect customer and/or universal service obligations; time frames which 'have been developed over years in response to consumer demand for prompt provision of service.'[76]

1.58 The revised industry code is supported in the submissions from the telecommunications industry as a significant and sufficient improvement to the current consultation framework under the Act.[77] The Committee notes that the revised industry code has been welcomed by ALGA.[78]

Committee comment

1.59 The Committee notes the concerns raised in submissions from the community regarding poor experiences with consultation and notification processes of carriers. Although the Committee accepts that many of the concerns will not be met by the bill presented by Mr Wilkie MP, the

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73 Telstra Corporation Limited, *Submission 46*, pp. 1-2.

74 Telstra Corporation Limited, *Submission 46*, p. 4.

75 Mr Stanton, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 34.

76 Mr Philip Mason, Assistant Secretary, NBN Regulation Branch, NBN Infrastructure, DBCDE, *Committee Hansard*, 17 February 2012, Canberra, p. 19.

77 Crown Castle, *Submission 3*, pp. 3-4; Optus, *Submission 43*, p. 5; Telstra Corporation Limited, *Submission 46*, p. 7; AMTA, *Submission 67*, p. 8; VHA, *Submission 68*, p. [2].

78 ALGA, *Submission 76,* p. 3.

consultation requirements for carriers are expanded in the revised industry code.

1.60 The Committee notes that one of the central aims of the revised industry code is to encourage an upfront collaborative approach between carriers, local councils and the community for proposed deployment of new mobile phone base stations. The Committee considers that targeted, succinct and unbiased information, made available early in any installation proposal process, would benefit industry and the community. The Committee encourages a proactive approach to be taken with regard to community engagement and building community awareness. The Committee acknowledges the agreement of many witnesses at the public hearing that resources and information *is* available, but there is room for improvement in the way that this information is provided to those in the community. As Mr Stanton noted, this material should be available 'on day one when the proposal comes out … so you are dispelling fears rather than creating them.'[79]

1.61 The Committee also notes that the revised industry code should address some of the concerns raised in submissions from individuals and community groups. Mr Stanton observed that the revised industry code does 'place quite stringent obligations on the carriers, because they need to consult with all of the stakeholders within a reasonable area … that does include schools.'[80] Mr Stanton continued:

> The definition in the [revised industry] code of the stakeholders that need to be consulted, the interested and affected parties, as they are called, is not limited to this list but includes progress associations, parents and citizens groups for preschools and schools, local MPs, resident groups, childcare centres, chambers of commerce, sporting groups, tenants, occupational health and safety committees, Aboriginal land councils, residents in adjacent council areas who live in proximity to a proposal and, of course, the local councils themselves.[81]

1.62 The Committee also acknowledges the view that the additional measures proposed by the revised industry code, as outlined at paragraph 1.29 of

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79 Mr Stanton, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 36.

80 Mr Stanton, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 33.

81 Mr Stanton, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 33.

this report, 'puts a lot more information into people's hands very early on', and that this will 'narrow the gap further'.[82]

Electromagnetic radiation

1.63 Concerns over the long term health impacts of exposure to EMR from mobile phone towers were prominent among the submissions to the inquiry from individuals and community groups. Under existing legislation, human EME/EMR exposure regulations for radiocommunications installations and portable transmitting equipment have been developed by ACMA. The ACMA EME regulations first came into effect on 1 March 2003,[83] and mandate the exposure limits developed by ARPANSA.[84] The regulations cover all portable transmitters as well as radiocommunications installations such as broadcast towers and amateur radio stations. The ARPANSA Standard specifies mandatory limits for human exposure to radiofrequency fields in the 3 kHz to 300 GHz range.[85]

1.64 Section 5.7 of the ACIF Code stipulates the aspects of the precautionary principle that apply to the restriction of EMR exposure in the operation of telecommunication sites. In reference to the ARPANSA Standard, Dr Lindsay Martin advised:

> It is important to understand that our standard is an exposure standard; it is not an emissions standard. We have set the limits that say 'You should not expose a human being to more than this amount of radiation.' The amount of radiation they are exposed to does not just depend on the strength of the source—it depends on

82 Mr Stanton, Communications Alliance Ltd, *Committee Hansard*, 17 February 2012, Canberra, p. 35.

83 ACMA, Electromagnetic energy fact sheet, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_1719> viewed 19 January 2012.

84 Information on the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) can be obtained at < http://www.arpansa.gov.au> viewed 18 January 2012.

85 According to an ARPANSA fact sheet, The ARPANSA Radiofrequency radiation exposure Standard, EME series no. 4, (available at <www.arpansa.gov.au/eme/index.cfm> viewed 19 January 2012), these limits are based on the 1998 guidelines of the International Commission on Non-Ionising Radiation Protection (ICNIRP) for limiting exposure to time-varying electric, magnetic, and electromagnetic fields (up to 300 GHz). These guidelines were issued in 1998; in 2009 ICNIRP issued a statement confirming their validity, taking into account scientific advances in the years since publication. The guidelines are available at <http://www.icnirp.de/documents/emfgdl.pdf> viewed 7 February 2012.

> the distance to the source and the direction and all sorts of other things.[86]

1.65 ARPANSA also states that its Standard is designed to avoid any known adverse effects of EMR and that at typical levels, mobile phone base station emissions are hundreds of times below the general public exposure limit, as set out in the ARPANSA Standard.[87]

1.66 AMTA maintains that the industry is compliant with the recognised EMR emission safety standards of both national and international health agencies, including the World Health Organisation and ARPANSA. AMTA cites statements from ARPANSA in its submission that the EMR exposure levels from mobile phone base stations are hundreds and sometimes thousands of times lower than the ACMA limit.[88]

1.67 In his submission to the inquiry, Dr Don Maisch suggests that the basis on which the current guidelines regarding safe levels of EMR from mobile phone towers have been developed is problematic due to differing interpretations of the science, differing values on what should be considered in setting health based standards, and the level of conflict of interest in expert assurances of safety.[89] Dr Maisch states that the current ACMA EME standards provide protection from any immediate harm from heating but not from possible long term biological damage due to persistent exposure to environmental level RF at power levels that do not cause a heating effect.[90]

1.68 In its submission, No Towers Near Schools questions the validity of the current EMR safety standards on the basis that:

- no studies have been done on children;
- no conclusive longitudinal studies have been done on the cumulative effects of EMR;
- the vast majority of EMR studies have been done on mobile phone use and not EMR from towers;
- the vast majority of studies have been done on the thermal effects of EMR on adults over 25 years of age; and

86 Dr Lindsay Martin, Manager, Non-Ionising Radiation, Radiation Health Services, ARPANSA, *Committee Hansard*, 17 February 2012, Canberra, p. 27.

87 ARPANSA, The ARPANSA Radiofrequency radiation exposure Standard, EME series no. 4, available at <http://www.arpansa.gov.au/eme/index.cfm> viewed 19 March 2012.

88 AMTA, *Submission 67*, pp. 24-26.

89 Dr Don Maisch, *Submission 53*, p. 2.

90 Dr Don Maisch, *Submission 53*, p. 8.

- more recent studies on non-thermal effects of EMR (biological effects at the cellular level such as the DNA) indicate that cellular changes can occur at a significantly lower level than the current standard.[91]

Committee comment

1.69 The Committee notes that there is community anxiety regarding safe EME/EMR levels. This Committee was not established to, and does not seek to, make findings regarding EME/EMR levels. However, the Committee notes that this issue has been the subject of extensive scientific examination, and that the Australian regulatory framework has been closely informed by the findings of that process of scientific scrutiny. The Committee received no evidence which would cause it to recommend any change in current public policy settings on this issue.

1.70 The Committee notes submissions which acknowledge that it will not be possible for carriers to completely avoid using sites that may be regarded as sensitive by members of the community.[92] The Committee also notes the observation made in AMTA's submission that greater distances to the point of service may require towers to operate at higher power, resulting in higher exposure levels.[93]

1.71 The Committee notes the observations of Mr Chris Althaus, the CEO of AMTA, about the information available on RF from facilities nationwide on a publicly accessible database,[94] and evidence from ARPANSA about consultation processes on the development of the current standard. The Committee also commends ARPANSA on its efforts, including those which involve the community, to ensure a public and transparent process to set its standards.

1.72 The Committee is pleased to note that the Radio Frequency National Site Archive (http://www.rfnsa.com.au/nsa/index.cgi) is a useful source of public information, including location and EME reports, on base station facilities built or upgraded since 2003.

91 No Towers Near Schools, *Submission 34*, p. 2.

92 Ms Anna Castellano, *Submission 13;* Councillor Peter Matic, *Submission 69.*

93 AMTA, *Submission 67*, p. 25.

94 Mr Althaus, AMTA, *Committee Hansard,* 17 February 2012, Canberra, p. 6.

Industry concerns

1.73 Peak industry bodies and telecommunications carriers are critical of the bill, raising concerns about service delivery and prohibitive costs. Crown Castle states in its submission that an uncertain regulatory environment will be created by the passage of the bill and will increase the cost of equity associated with spectrum bids, leading to a reduced bid price and lower return to the taxpayer.[95]

1.74 Optus and AMTA submit that the bill will impede the ability of mobile network operators to meet the future demand for their services including:

- projections that there will be almost 20 million mobile broadband subscriptions on handsets together with another 6.3 million data cards by 2020; and
- a forecast increase in mobile data traffic volumes at a compound annual growth rate of 95 per cent to 2014.[96]

1.75 Mr Althaus reiterated this point in his opening statement to the Committee at the public hearing:

> The level of demand for advanced mobile telecommunications services is well known to be increasing at a very substantial rate. Of course, in the world of forecasting there is a range of options and a range of suggestions out there, but in recent times it has not been unusual for the level of mobile data travelling over networks to double in the course of a 12-month period. Firms such as Ericsson have looked at current trends and are predicting growth in the order of tenfold in the period out to 2016; in other words in the next four to five years. A more bullish forecast from Cisco might suggest that that is actually going to be an 18-fold increase … [97]

1.76 Optus further states in its submission that the bill will have significant and negative future economic productivity impacts and cites figures showing that the mobile telecommunications industry contributed $17.4 billion to the Australian economy in 2008-10, and it will contribute over $80 billion and generate an additional 70,000 jobs over the next ten years.[98]

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95 Crown Castle, *Submission 3*, p. 3.

96 Optus, *Submission 43*, p. 4; AMTA, *Submission 67*, p. 3.

97 Mr Althaus, AMTA, *Committee Hansard*, 17 February 2012, Canberra, p. 2.

98 Optus, *Submission 43*, p. 4.

1.77 AMTA in its submission discusses a study it commissioned from Deloitte Access Economics on the estimated cost impacts to industry if the bill is implemented.[99] In the Deloitte Access Economics report, additional overall annual costs of $2.2 billion are estimated, comprising:

- $2.06 billion in additional administration costs largely due to increased notification requirements and dealing with more objections;
- $132 million when required facility construction, upgrade or maintenance does not occur as proposed; and
- $14 million as a result of construction, upgrade or maintenance delays.[100]

Other operational aspects of the bill

1.78 Carriers may install infrastructure under the existing Act if they obtain a FIP,[101] and may inspect land, maintain and upgrade existing facilities, and connect subscribers to a network.[102] Telstra and AMTA criticise the provision of the bill allowing for the granting of a FIP to be appealed, stating that no application for this license has ever been made and that these permits would only be granted under exceptional circumstances.[103] In evidence to the Committee at the public hearing, Mr Cheah confirmed that these permits have never been applied for:

> The bill talks about the facilities installation permit process. It is worth mentioning right now another key statistic. We have never, ever had an application for a facilities installation permit in the entire history of the ACMA.[104]

1.79 Telstra and Crown Castle make observations in relation to the provision of the bill that seeks to limit tower extensions to 1 metre (currently 5 metres), namely that it will have no functional benefit as antennae are typically larger than this.[105] AMTA criticises this provision also stating that it will

99 Information on Deloitte Access Economics can be accessed at <http://www.deloitteaccesseconomics.com.au/> viewed 20 January 2012

100 AMTA, *Submission 67*, p. 7.

101 *Telecommunications Act 1997*, Schedule 3, clauses 1 and 25.

102 *Telecommunications (Low-impact facilities) Determination 1997*, Explanatory Statement, <http://www.comlaw.gov.au/Details/F2004B00455/Explanatory%20Statement/Text> viewed 7 February 2012.

103 Telstra Corporation Limited, *Submission 46*, p. 18; AMTA, *Submission 67*, p. 31.

104 Mr Cheah, ACMA, *Committee Hansard*, 17 February 2012, Canberra, p. 13.

105 Telstra Corporation Limited, *Submission 46*, p. 2; Crown Castle, *Submission 3*, pp. 2-3.

hinder co-location and in some cases necessitate the construction of additional towers.[106] In oral evidence to the Committee, Mr Althaus reiterated AMTA's concerns:

> The way the bill is changing the assessment, to be frank, would effectively draw the industry to a standstill. For example, the bill proposes that an existing tower extension be limited to one metre. The reality is that if you were to add an antenna to a tower—antennas are typically 1.2 to 2.7 metres.[107]

1.80 PIPE Networks states in its submission that the bill will cause delays and increased costs in installation and maintenance activities and that its application to carriers performing maintenance on any low-impact facility is excessive and should be limited to installation of communications towers only.[108]

1.81 There is further criticism by AMTA in its submission of the provision in the bill stipulating that the height of a tower is now to include any antennae or aerials. AMTA's view is that facility upgrades will be hindered by this requirement as newer equipment that marginally increases the height of a tower may require a council DA approval.[109]

1.82 AMTA accepts in its submission that the bill is intended to ease community concerns regarding visual amenity, exposure to EMR, and consultation during the installation of mobile phone towers.[110] AMTA states however that the benefits of the proposed changes will be limited and the costs to industry of building and upgrading new towers will be prohibitively expensive if the bill is implemented.[111]

Possible unintended consequences of the bill

1.83 The bill is unlikely to provide any benefits in terms of increased community consultation during the installation of mobile phone towers. In the first instance, its amendments will apply only to low-impact facilities and not large tower installations. Many in the community may be surprised and disappointed to discover that the consultation requirements

106 AMTA, *Submission 67*, p. 27.

107 Mr Althaus, AMTA, *Committee Hansard*, 17 February 2012, Canberra, p. 5.

108 PIPE Networks, *Submission 45*.

109 AMTA, *Submission 67*, p. 27.

110 AMTA, *Submission 67*, p. 35.

111 AMTA, *Submission 67*, p. 35.

for stand-alone mobile phone tower proposals will be unaffected by the passage of the bill.

1.84 The Committee notes that Item 2 of the bill provides that no kind of tower can be designated as low-impact. Under this provision, council development approval would likely be required for all future mobile phone tower construction activities. As the Act would no longer apply to these facilities, most of the additional amendments proposed by the bill would not be relevant to future mobile phone tower proposals.

1.85 Item 3 provides that allowable extensions to existing towers be reduced from 5 metres to 1 metre in order to be considered low-impact. In practical terms however, because the antennae used by the telecommunications industry are all larger than 1 metre, no extensions will be permissible under this provision. Future tower upgrades may therefore require council approval and the Act will no longer apply.

1.86 Item 4 provides that tower heights must include antennae. However, this requirement is unlikely to have any impact given that no type of tower or tower extension will be regulated by the Act under the provisions in Items 2 and 3.

1.87 Because of Items 2 and 3 also, the community consultation amendments proposed by Items 1, 5, and 6 of the bill will likely only apply to inspections, maintenance work and upgrades that will still be regulated by the Act. This has the potential to prevent the industry from maintaining and expanding the existing network in a timely fashion. The universal service agreement may also be negatively impacted. Under these consultation provisions, carriers will likely be required to prepare thousands of additional notifications of routine activities that will be of little concern or interest to most residents in the vicinity.

1.88 Item 7 of the bill restricts the conditions under which a FIP may be issued for a specific site and Item 9 provides that the issuing of these permits can be appealed. It may be of comfort to some members of the community that under these two amendments a mandatory distance of 100 metres from a sensitive site will be imposed under these licences and that they will be contestable. However, no application by a carrier has ever been made for this permit. These provisions would therefore have no impact in the future unless this was to change.

1.89 Items 8, 10, 11 and 12 of the bill relate to the processes by which ACMA makes decisions. As the Commonwealth agency that enforces the requirements of the Act, any amendments to the Act (including those

which affect the application of industry codes and practice) may affect ACMA's jurisdiction.

Concluding remarks

1.90 The Committee is aware of the tremendous contribution made by telecommunications networks to the Australian economy and society, and recognises that demand for network capacity will continue to grow. The ability of the industry to efficiently maintain and upgrade its infrastructure is an essential component of the ability to extend services. The Committee is cognisant however of community concerns caused by the ever increasing roll-out of mobile phone towers. Effective and active consultation by industry is an essential part of this process.

1.91 The Committee concludes that the bill, as currently proposed, would not meet its objectives of strengthening the role of the community in the decision-making processes by carriers. Furthermore, essential routine activities by carriers, which would generally be of little concern to the community, will likely be severely disrupted by the consultation requirements of the bill.

Recommendation 1

1.92 **That the House of Representatives not pass the Telecommunications Amendment (Enhancing Community Consultation) Bill 2011.**

Nick Champion MP

Chair