SENATE STANDING COMMITTEES ON ENVIRONMENT AND COMMUNICATIONS
INQUIRY INTO THE
TELECOMMUNICATIONS AMENDMENT (MOBILE PHONE TOWERS) BILL 2011
2012

SUBMISSION BY THE DEPARTMENT OF PLANNING

1. Western Australia has comprehensive and co-ordinated planning and land management frameworks and systems involving a number of co-ordination bodies, State Government agencies, the 140 individual Local Governments and the development industry and service providers.

2. The Department of Planning welcomes this opportunity to provide its views on, and is pleased to provide this submission on behalf of relevant State Government agencies to, the Senate Standing Committees on Environment and Communications' Inquiry into the *Telecommunications Amendment (Mobile Phone Towers) Bill 2011*.

TELECOMMUNICATIONS AMENDMENT (MOBILE PHONE TOWERS) BILL 2011

3. The *Telecommunications Amendment (Mobile Phone Towers) Bill 2011* (the Bill) was introduced as a private member's bill to the Commonwealth Senate on 14 September 2011 by Senator Bob Brown.

4. *"This bill aims to provide a better balance between the need for a secure and connected mobile telecommunications network and a community's right to protect itself from potential harm and determine the appropriate location for certain infrastructure"* (Second Reading Speech, The Senate, 14 September 2011(the Second reading Speech)). This objective is generally supported.

5. The proposed amendment to the *Australian Radiation Protection and Nuclear Safety Act 1998* is supported from a health perspective.

6. However, the proposals to remove the exemption for low-impact facilities from State and Local Government planning processes and to remove the exemption on the application of State and Territory planning and environment laws are not explained by the Bill's sponsor. The removal of these exemptions is not supported as it will have significant adverse impacts as discussed below.

7. In the light of the comments below, it is strongly suggested that a Regulatory Impact Assessment be conducted on the proposals in the Bill.

REMOVAL OF THE EXEMPTION FOR LOW-IMPACT FACILITIES FROM STATE/TERRITORY PLANNING LAWS

Why telecommunications infrastructure was made subject to State/Territory planning laws

8. A specific intention of the *Telecommunications Act 1997* (the Act) was that *"the rollout of infrastructure will be generally subject to State/Territory planning laws from 1 July 1997, with Commonwealth law to apply in specified circumstances"* based on *"taking into consideration the more competitive environment from 1 July 1997, community concerns about infrastructure rollout and the need to have a stable environment to encourage infrastructure investment"* (*Telecommunications Bill 1996 Explanatory Memorandum*, Volume 1, p.7, the Parliament of the Commonwealth of Australia, House of Representatives, 1996).

9. The expansion and installation of telecommunications networks usually involves the physical development of land and/or alteration to the appearance of buildings or structures, which may have impacts on the character and amenity of local environments. Consequently, Western Australia's *Statement of Planning Policy no. 5.2: Telecommunications Infrastructure* (Western Australian Planning Commission, 2004) (SPP5.2) is aimed at ensuring that facilities are designed and installed in a manner that protects the visual character and amenity of local areas, while providing for the effective and efficient roll-out of networks and avoiding lengthy and litigious approval procedures.

Exemption from State/Territory planning laws for low-impact facilities

10. However, clause 6, sub-clause (1)(b) of Part 1 of Schedule 3 to the Act provides for carriers to retain standing land access powers and immunities from State and Territory planning and environment laws for the installation of any declared 'low-impact facilities', while sub-clause (3) authorises the Commonwealth Minister to determine which facilities are to be considered low-impact facilities. These determinations are listed in the *Telecommunications (Low-impact Facilities) Determination 1997* (the Determination) and amendments as issued from time to time, and describe not only the facilities but also the areas in which they are considered to be low-impact.

11. The Determination specifies when a carrier can enter land and install a low-impact facility without seeking approval under State and Territory laws. The Determination also ensures that such installations are subject to the processes for negotiation and dispute resolution set out in the *Telecommunications Code of Practice 1997*.

Why low-impact facilities are exempt from State/Territory planning laws

12. An intention of the Act (Part 1, clauses 3 and 4) is *"that telecommunications be regulated in a manner that...does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry"*, while not compromising the effectiveness of regulation in achieving the objective, amongst others, *"to provide a regulatory framework that promotes...the availability of accessible and affordable carriage services that enhance the welfare of Australians"*.

13. Low-impact facilities are considered to be those that are essential to maintaining telecommunications networks but which are unlikely to cause significant community disruption during their installation or operation. Adherence to provisions under the Determination facilitates rollout of sensitively-designed carrier infrastructure which benefits the end-user (*Explanatory Statement - Telecommunications (Low-impact Facilities) Determination 1997 (Amendment no. 1 of 1999),* p.3).

14. Consequently, exempting low-impact facilities from State/Territory laws provides for the efficient installation of facilities such as:

- radio facilities, including inbuilding installations and extensions to towers
- underground housings, such as pits and manholes
- above-ground housings, such as pillars, roadside cabinets, pedestals, equipment shelters
- underground cables, including cable location marking posts or signs
- public payphones
- temporary facilities for emergencies
- co-located facilities

provided they comply with the (limited) dimensions, protrusions, distances, colours or other requirements prescribed in the Determination.

15. SPP5.2 recognises the exemptions for low-impact facilities from State/Territory planning laws in the Act, and gives both State and Local Government planning authorities the authority to adopt them in the Western Australian planning system.

The effect of removing the exemption from State/Territory planning laws for low-impact facilities

16. The Second Reading Speech for the Bill states that *"It will also remove the exemption for "low-impact" facilities from local or state government planning processes"* (Hansard, The Senate, Wednesday 14 September 2011, p.6092). No explanation is provided to support this.

17. In order to do this, the Bill should include an item specifically repealing clause 6, sub-clause (1)(b) and sub-clause (3) of Part 1 of Schedule 3 of the Act, yet no such item is included in the Bill. However, the proposals to change the definition of 'tower' could indirectly result in the removal of some specific low-impact facilities from the exemption from State/Territory planning laws, and the repeal of clause 37 of Schedule 3, Division 7 of the Act will impact on low-impact facilities (see paras 36-37 below).

18. Nevertheless, it has been assumed that there is an intention to remove the exemption for low-impact facilities, which will mean that every telecommunications facility, regardless of size or whether it will impact the surrounding community, will require State/Territory planning approval.

The impact of removing the exemption from State/Territory planning laws for low-impact facilities

19. From a planning perspective, the removal of the exemption for low-impact facilities will result in a significant increase in the volume of development applications made to both State and Local Governments to accommodate 'low-impact', in addition to the existing 'high-impact', applications which puts at risk the ability to deal with the 'high-impact' applications in a timely manner with potentially adverse consequences.

20. State and Local Governments will be unable to absorb the additional costs incurred to process low-impact applications, particularly given the low application fee paid (which is based on the value of the development). The low application fee paid for low-impact facilities does not equate to the recovery of the human resource costs for the time spent to determine the application (low application fee, high staff resource requirement).

21. Further, there is no demonstrated need to alter the current approval system, particularly given that low-impact facilities are largely co-located with existing facilities (towers), or are placed on existing buildings, thus having limited to no additional adverse visual amenity impacts.

22. From an emergency management perspective, this will create an impossible situation if the current exemptions for a temporary facility installed:
- in an emergency; and
- to provide assistance to an emergency services organisation

are withdrawn.

23. In this context, an *emergency*, for the installation of a facility, means circumstances in which the facility must be installed without delay to protect:
- the integrity of a telecommunications network or a facility; or
- the health or safety of persons; or
- the environment; or
- property; or
- the maintenance of an adequate level of service,

and *emergency services organisations* include:
- a police force or service;
- a fire service;
- an ambulance service;
- a service specified in the numbering plan (the Act, s 455) as an emergency services organisation; and
- a service for despatching the force or service.

24. In the event of an emergency, particularly involving mass casualties, the ability to rapidly deploy emergency communications, particularly where normal communications may have been compromised by the incident, is critical for an effective emergency management response. Any delays are likely to adversely impact on the health outcomes of those affected, the safety and security of the first responders and the overall co-ordination of the emergency response.

25. From both the community and industry perspectives, the requirement to have all low-impact facilities subject to planning approval will result in increased costs from the significant increase in 'red tape' caused from having to make and submit applications, assessing the applications and issuing approvals.

26. Not only does this negate the reasons for exempting low-impact facilities from State/Territory planning approval, but it also increases red tape at a time when COAG is actively promoting the reduction of this. The current Productivity Commission's review, *Performance Benchmarking — The Role of Local Government as a Regulator*, and recent past reviews (planning, zoning and development assessment (April 2011), retail industry (December 2011)), expressly addresses excessive regulatory burdens resulting in costs to business.

27. This effect will be compounded by the removal of the exemption from State/Territory planning and environment laws.

Conclusion

28. The removal of the exemption for low-impact facilities from State and Local Government planning processes will create adverse impacts for emergency management, the community, industry and planning authorities, and so is not supported, instead, undertaking a Regulatory Impact Assessment is strongly recommended.

REMOVAL OF THE EXEMPTION ON THE APPLICATION OF STATE/TERRITORY PLANNING AND ENVIRONMENT LAWS

Why telecommunications infrastructure was made subject to State/Territory planning laws

29. As mentioned above, the specific intention of the Act was that *"the rollout of infrastructure will be generally subject to State/Territory planning laws from 1 July 1997, with Commonwealth law to apply in specified circumstances"* based on *"taking into consideration the more competitive environment from 1 July 1997, community concerns about infrastructure rollout and the need to have a stable environment to encourage infrastructure investment"* (*Telecommunications Bill 1996 Explanatory Memorandum*, Volume 1, p.7, the Parliament of the Commonwealth of Australia, House of Representatives, 1996).

30. The expansion and installation of telecommunications networks usually involves the physical development of land and/or alteration to the appearance of buildings or structures, which may have impacts on the character and amenity of local environments. Consequently, Western Australia's *Statement of Planning Policy no. 5.2: Telecommunications Infrastructure* (Western Australian Planning Commission, 2004) (SPP5.2) is aimed at ensuring that facilities are designed and installed in a manner that protects the visual character and amenity of local areas, while providing for the effective and efficient roll-out of networks and avoiding lengthy and litigious approval procedures.

Exemption from State/Territory planning and environment laws

31. However, clause 37 of Schedule 3, Division 7 of the Act provides for carriers to retain standing land access powers and immunities from State and Territory planning and environment laws for activities authorised by Divisions 2, 3 or 4 of Schedule 3.

Why certain activities are exempt from State/Territory planning and environment laws

32. As mentioned above, an intention of the Act (Part 1, clauses 3 and 4) is *"that telecommunications be regulated in a manner that...does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry"*, while not compromising the effectiveness of regulation in achieving the object, amongst others, *"to provide a regulatory framework that promotes...the availability of accessible and affordable carriage services that enhance the welfare of Australians"*.

33. Consequently, exempting certain activities from State/Territory planning and environmental laws provides for efficient:

– inspection of land - to determine whether it is suitable;
– installation of facilities for:
  - those authorised by a Facility Installation Permit issued under the Act
  - declared 'low impact' facilities (discussed separately above)
  - temporary defence facilities; or
  - connecting subscribers to existing networks until 30 June 2000; or
– maintenance of existing facilities, including the replacement of the whole or part of a facility at the same location where the replacement facility emits no more noise and is not apparently larger.

34. SPP5.2 recognises the exemptions for these activities from State/Territory planning laws in the Act, and gives both State and Local Government planning authorities the authority to adopt them in the Western Australian planning system.

The effect of removing the exemption from State/Territory planning and environment laws

35. The Second Reading Speech for the Bill does not mention the intention to remove the exemption on the application of State / Territory laws (Hansard, The Senate, Wednesday 14 September 2011, p.6092), however, the Explanatory Memorandum for the Bill states *"It also removes the exemption of state and territory laws in relation to the installation and maintenance of such facilities"* (*Telecommunications Amendment (Mobile Phone Towers) Bill 2011 Explanatory Memorandum* (the Parliament of the Commonwealth of Australia, Senate, 2011).

36. To effect this, the Bill includes in Items 21 to 25 amendments to, or repeal of, the relevant clauses of the Act.

37. Item 25 in particular repeals clause 37 of Schedule 3, Division 7 of the Act, effectively removing the exemptions from the application of State/Territory planning and environment laws and thus requiring all inspections of land, installations of the specified types of facilities and maintenance of exiting facilities to have State/Territory planning approval.

The impact of removing the exemption from State/Territory planning and environment laws

38. From a planning perspective, the removal of the exemptions from State/Territory planning laws will result in significant increase in the volume of development applications made to both State and Local Governments to deal with applications for inspections of land and the installation and maintenance of facilities.

39. From an environmental perspective, the removal of exemptions from State environmental laws may cause a minor increase in the volume of applications for permits to clear native vegetation.

40. State and Local Governments will be unable to absorb the additional costs incurred in these additional applications.

41. From both the community and industry perspectives, the requirement to have all inspections of land and the installation and maintenance of facilities subject to planning and environmental approval will result in increased costs from the increase in 'red tape' caused by the need and time to process and determine the applications, leading to increased determination delays, costs to service providers and also customer servicing restrictions.

42. Not only does this negate the reasons for exempting inspections of land and the installation and maintenance of facilities from State/Territory planning approval, but it also increases red tape at a time when COAG is actively promoting the reduction of this. The current Productivity Commission's review, *Performance Benchmarking — The Role of Local Government as a Regulator*, and recent past reviews (planning, zoning and development assessment (April 2011), retail industry (December 2011)), expressly addresses excessive regulatory burdens resulting in costs to business.

43. This effect will be compounded by the removal of the exemption from State/Territory planning laws for 'low-impact' facilities.

Conclusion

44. The removal of the exemption from State/Territory planning and environment laws will create adverse impacts for the community, industry and planning authorities, and so is not supported, instead, undertaking a Regulatory Impact Assessment is strongly recommended.

(WA) Department of Planning

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