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Australia

Submission to the Telecommunications Amendment (Mobile Phone Towers) Bill 2011

Contents

Introduction

Thank you for the opportunity to have input to the Committee's deliberations. This submission is in support of the amendments to the *Telecommunications Act 1997* and the *Australian Radiation Protection and Nuclear Safety Act 1998* proposed by the Telecommunications Amendment (Mobile Phone Towers) Bill 2011.

The outdated nature of the current Telecommunications Act has left communities without a voice in the face of a dense and rapid national mobile phone tower build so concentrated that it could not have been envisaged by the original drafters of the Telecommunications Act. Change is clearly needed to bring the Telecommunications Act up to date. Few industries in this nation have the sorts of commercial advantage given to the telecommunications industry by this Telecommunications Act and it is hard to imagine another industry so limited in its accountability.

Community outcry over the unparalleled coercive powers given to private industry under the Telecommunications Act as it stands have been dismissed on various grounds: that communities are suffering from "not in my backyard", that any change will hold back technological advance, and that communities are being misled by imagined health risks that aren't really there. These are nothing more than straw

men. Communities just want proper consultation, appropriate siting of towers, accountability by industry for the powers provided to it and a precautionary approach to managing technologies that may prove hazardous to human health.

Improvement to the Bill

The Bill could be improved: while the major focus of the Bill is on addressing the issue of mobile phone towers, there are amendments recommended to Division 7 of Schedule 3 of the Telecommunications Act which appear to be the source of concerns that the amendments will also affect fixed-line services, cable pits etc. I believe these concerns could easily be addressed by adjusting those proposed amendments (to Div 7) to limit them to EMR emitting facilities. This would significantly reduce the cost that industry has imputed to the Bill. Other than cost, industry complains that the Bill may delay low impact facilities, this is an empty complaint as communities have found that consultation often lags site identification by years (eg the current battle at Seaford is over a site identified by industry in 2010 but that was only raised with the community in 2012).

Structure of this submission:

It is very difficult to understand this issue without understanding real-life examples of poor communication, poor siting, inappropriate industry behaviour and disinterest from the "regulators". I have included both the on-going example from my own community and a short collection of the many, many others that are going on around Australia. I commend the committee to:

http://www.notowersnearschools.com/othercomm.html

for a collection of close to 200 similar examples from recent years. I would also urge the Committee to review the community submissions to the House of Representatives Standing Committee on Infrastructure and Communications Inquiry into the Telecommunications Amendment (Enhancing Community Consultation) Bill 2011. While this inquiry relates to a different Bill, the intent is similar and many of the over 60 community submissions[1] give vivid accounts of the difficulties they have faced in dealing with tower proposals. Regrettably responding to inquiries is difficult for communities already stretched by their tower battles and not all will have the energy to do it twice, or even understand the differences between the upper and lower house committees.

Firstly however, I wish to address the amendments in their order, highlighting particularly the key problems with the current Telecommunications Act that this Bill seeks to address and demonstrate through the lens of our own experiences why the Bill provides a proper approach to redressing the current imbalance between industry and community needs and powers.

Amendments to Australian Radiation Protection and Nuclear Safety Act 1998

Australia's EMR exposure standards are significantly worse than world's best practice. Unlike mobile phones where each person has the opportunity to self manage their exposure to EMR through texting, using hands free kits, and making shorter phone calls, communities (including children) living under mobile telecommunications facilities are unconditionally exposed 24x7 (whole body) for

1 http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ic/telecommunications/subs.htm

decades. Our current generation of children will have a lifetime of exposure at unprecedented levels, accelerated by unregulated tower infill and site expansions that have multi-transmitter sites just hundreds of metres apart over urban areas. In the absence of very long term data or research on children, it is clear Government has a responsibility to ensure emissions are as low as reasonably achievable in line with international best practice.

Other countries have much lower EMR emission standards than our ARPANSA EMR Exposure Standard for mobile telecommunications facilities[2]. This has not stopped these countries from being able to operate a fully functional mobile telecommunications network.

Australia has adopted 100% of the ICNIP Standard. Other countries' standards, as a percentage of the ICNIRP Standard are (see footnote 2 for source):

Switzerland	1%
Poland	2%
Italy	Less than 20%
Russia	20%
Belgium	25%

Clearly we could do much better and it is appropriate to enshrine regular reviews into legislation given that our exposure is increasingly rapidly as more and more towers are constructed, and existing towers expanded, in urban areas. Technology is changing at a rapid rate and yet there has been no formal and public review since 2002. Regular reviews will ensure the Standard keeps pace with technology and will improve community confidence.

Amendments to the Telecommunications Act 1997

Amendments extending obligations to all involved in installations and maintenance (1A)

The Act currently only applies to Carriers, this has allowed contractors and tower installers (eg Crown Castle) who are not Carriers to avoid the responsibilities of the Act, and the regulations that flow from it, while still asserting that they can use its powers. Clearly the Act needs to cover all those involved so that its intent cannot be subverted by clever contracting.

Amendments about the definition of a tower (4,5,6,7,9,10)

Communities need to know what is actually going to be installed at a facility. Excluding various components inhibits community capacity to understand what a facility will actually comprise, and encourages "gaming" the Act to have high impact facilities classified as low impact by excluding certain components. For proper consultation and assessment facilities should be defined by their actual size (ie from the base to the very top).

[2] http://eprints.mdx.ac.uk/133/2/MazarAug08.pdf

Amendments about increasing EMR output without notifying communities (8)

Communities need to be consulted about increases in EMR output of facilities, particularly as industry argues that outputs are low relative to the national standard as part of their rationale for not changing the Act. Under the Act at present a facility could be changed from 1% of the national standard at installation to 100% of the standard without any further community engagement and under the guise of "maintenance". Expansions to facilities should not be able to be disguised as "maintenance" and the community needs to be informed if EMR emissions are increased, particularly as some sites a literally metres from houses and apartments.

Amendments relating to consultation and Codes of Practice (11,12,13,14)

Consultation footprint

Mobile phone towers emit radiation and are visually intrusive, standing by their very nature above the surrounding features. It is appropriate therefore that more than just the landowner or occupier is notified and as the industry has shown a great deal of inconsistency in their consultation practice it is appropriate to enforce good practice in the Act. The ACIF Code has done nothing to improve this inconsistent practice, and the Code does not apply to all towers, only "low impact" ones. A requirement to consult in a 500m radius is sensible and reasonable as the EME reports show that EMR is emitted a minimum of this distance. The cellular nature of mobile phone networks means that people at the margin of a cell may be affected by multiple towers. Lastly, empirical studies, acknowledging that the health debate is still going on, and recent epidemiological studies, suggest 500m as the radius of greatest effect on health[3].

EME Reports

EME Reports showing the full exposure in the affected area (at a height of 1.5 m only) are created routinely by carriers as part of their development planning process for all high or low impact facilities and are attached to the listing for each site on the industry's RFNSA site archive website (unfortunately they are not routinely provided to communities though, and are often incorrect). Reports provided to the community should be in actual EMR units (eg $W/m^{2)}$ rather than just as a percentage of the ARPANSA Standard which is, by international standards at the maximum envisaged by ICNIRP. In the interests of good communication and proper consultation, I believe these reports should be correct, include all co-locations and planned expansions, and be provided to the community at the time of notification, and as a matter of course. Proper consultation should mean the community has all the information it needs.

The ARPANSA standard is an ***exposure*** standard, not an ***emission*** standard. Because we have so many facilities now the exposure that a person experiences may not relate to a specific facility, consequentially the use of an exposure standard as a proxy for an emission standard (ie reporting the imputed exposure from a given facility in the EME report) is long past its use-by date. The community needs better reports on what they will actually be exposed to, potentially for decades. Exposure is

[3] *Mortality by neoplasia and cellular telephone base stations in the Belo Horizonte municipality Minas Gerais state, Brazil* : Adilza Dode et al, Science of the Total Environment, 2011, STOTEN-12672 , doi:10.1016/j.scitotenv.2011.05.051

cumulative from all sources, industry and the regulators can't pretend that facilities exist in a vacuum.

Consultation period

The existing 10 day response period provided to communities is highly inadequate and is not nearly long enough to allow the community to provide an informed response. The Bill recommends 30 days and this is a far more reasonable timeframe. Anything shorter will unfairly disadvantage community members and not be representative of a genuine effort to consider community consultation. A shorter period would particularly disadvantage those in isolated locations, the elderly, those with disabilities, health issues or those who need to access translation services.

Open and transparent conduct

Finally, consultation would be greatly enhanced by communities being ***consulted***, not just ***notified*** (ie usually a lease is already signed by the time the community is consulted – hence there is no consultation, the community is just being notified of what will happen to them), and by communities being provided with relevant reports when requested (eg proposed coverage area, coverage blackspot maps, complaint numbers, etc). Current practices suggest siting in a particular location is chiefly based on cost rather than on avoiding community sensitive sites.

Ability to influence

Objections received by carriers, from the community or from councils, carry no weight and the carrier has no obligation (not even under the revised ACIF Code) to alter their plans in any way in response. Proper consultation should mean, that not only are communities properly notified and informed about proposals, and given the opportunity to respond, but that their responses have some weight in the consultation process, and must be properly addressed by carriers.

Self assessment and self-regulation

The ACIF Code – not the great panacea

Although this voluntary industry Code has been reviewed (took over a year and is still awaiting ACMA registration – hopefully ACMA will ask for real improvement along with these Act amendments which will need to work hand-in-hand), a large number of the issues raised above were deemed out of scope and are simply unresolved by the Code. On being advised that issues raised by my own submission to the Code review were out of scope I read the terms of reference of the Code review and found that in fact the issues were not out of scope, the industry simply chooses not to address them. A community ACIF Code review panel member commented in her submission that the new Draft Code was essentially an information pack – this is a common criticism, the Code seems to have more value as a smoke screen for industry when appearing before Committees such as yours than being anything of meaningful benefit for communities.

It is routine for Carriers to "consult" after they have already signed lease contracts for their facilities. Clearly then, the consultation is nothing more than notification. Nothing in the ACIF Code stops carriers undertaking this practice.

The Code applies exclusively to low impact facilities.

Some developers not covered (eg Crown Castle – despite their assertion that they support it they also claim not to be bound by it!).

The ACIF code requirements are drafted in such a way that it fails to create any legal obligation for industry. Use of phrases such as "must have regard to" rather than simply "must" undermines the intent of the Code's main tenants: improved consultation and application of the precautionary approach.

The MCF's own guidelines for Councils[4] regarding the interpretation and application of the ACIF Code impress upon Council that carriers have no obligation to amend their consultation plan in response to Council feedback, no obligation to respond to feedback provided to them by Council, or to alter their plans in response to community feedback.

The power to issue LAANs for low impact towers (right to install notices, against owners wishes) underlines this message. It is well known that the ACIF Code is not enforced and breaches do not result in infringement notices or fines of any sort.

The message is: carriers can effectively do what they like.

Attitude of regulators

The ACMA have not taken legal action for a breach in 9 years and does not consider that communities have any grounds to complain about what the ACMA views as industry's "rights" – ie ACMA views industry as having "rights" rather than obligations and can see no right for the public to have their complaints properly recorded and addressed. Annual reports from 2008-2010 show not one single infrastructure related complaint was investigated to completion. Two alone made it to the preliminary investigation stage.

The ACMA's attitude, coupled with the extensive and coercive powers afforded to industry under the current legislation, mean it is not surprising industry have come to treat community concerns as trivial and rather annoying, and their own ACIF Code requirements as some vague guideline.

It is a regulatory climate that has led many communities to complain bitterly about the aggressive pursuit of industry focused needs with no regard for community concerns or community impact.

Right of review

There is currently no right of review for low impact towers for communities and limited rights of review for high impact towers. The ACMAs decisions relating to Facilities Installation Permits (FIPs) are only appealable by the carrier. This is clearly not acceptable and should change.

Landowner between a rock and a hard place

Land owners offered leases (financial inducements), are stuck between taking the cash and being castigated by their community if it is an inappropriate site, or losing the lease payments and getting the tower anyway (due to LAANS being available for low impact towers). Industry is well aware of the bind land owners find themselves in, and anecdotally make use of this to pressure landowners – no regulator addresses this issue and the legislation that allows this to occur persists.

Land Activity Access Notices (LAANs) – "right to install"

Despite industry claims to the contrary, LAANS appear to be relatively common. These are self issued notices from carriers to land owners or occupiers who refuse permission for access, to say the carrier intends to install their tower anyway.

This excessive and unreasonable power to install low impact mobile telecommunications (EMR emitting) facilities, against land owner and occupier wishes, is afforded to carriers under the Telecommunications Act. Even when LAANs are not issued, the power to issue them over a land owner's head naturally influences the land owner's decision. It applies undue pressure.

[4] http://www.mcf.amta.org.au/pages/Guidelines.for.Local.Government

I understand Hobart City Council were on the receiving end of a Land Activity Notice recently, when they refused permission for a tower on their land. Thornbury also received a LAAN last year. Four were used to install mobile telecommunications facilities on apartment blocks alone in 2009[5].

LAANs are not recorded or monitored by the ACMA so exact numbers are hard to ascertain (common theme – no accountability). This self regulated and excessive power should be removed with respect to EMR emitting faciities. There is however a place for a permit assessed and issued by the ACMA[6] (ie FIPs) for use by carriers in truly exceptional circumstances, where the application meets the criteria set out in the Act.

Amendments relating to appropriate siting and the precautionary principle (15,16,17,19,28,29)

Communities want mobile towers sited appropriately – that is, they need to be sited so as to minimise the impact on, and potential future risk to, the physical, visual and auditory (towers come with noisy, air-conditioned equipment sheds) amenity, the environment and the health of the local community. Incentives in the Act need to drive industry towards this outcome (and ideally to improved compression and transmission-reduction technology rather than just more towers and ever-higher emissions), otherwise all of these attributes of any functioning community are put at risk, not as industry would have it for "coverage", instead they are at risk for industry profit (reduced cost = profit in what is a very mature industry reporting annual profits in the billions). Currently the Act incentivises industry to put their own profit first (through cheapest possible siting, minimal consultation and no consideration of community sensitive sites (a visit to the RFNSA website list of EME reports will show that virtually no reports identify community sensitive sites as they are supposed to, even when such sites are identified by communities, still they are ignored!)).

Regrettably we apply the "weak" precautionary principle to telecommunications (more commonly known as the precautionary *approach*), which is more diluted than the principle used by many other countries for telecommunications and weaker than the principle used for other health and environmental issues in Australia. The key difference is that in telecommunications regulators allow things that might otherwise not go ahead under a true precautionary principle, to go ahead if it is cheaper to do so (ie on the basis of cost), or to realise "service delivery objectives" (and there is no objective, independent arbiter of "service delivery objectives"). This is not really any precaution at all and consequently it appears that the precautionary principle in Australia just means "emissions are less than the ARPANSA Standard"! (even though the ARPANSA standard is an ***exposure*** standard not an ***emission*** standard). It is pretty obvious that we have no precautionary principle - the standard has to be applied anyway.

The standard doesn't cover non-thermal effects and, because the research isn't in, it doesn't cover long-term exposure, particularly involving children (and the indicators that there might be problems aren't just about cancers, there are other health problems potentially caused by EMR). Our standard setter (ARPANSA) suggests that no action should be taken on the Standard unless a causal mechanism for EMR

[5] Senate Question on Notice 2010: Sen. Ludlum to Minister for Communications, ACMA had to ask industry, who weren't sure!

[6] Facilities Installation Permits (FIP): assessed and issued by the ACMA to allow land access for installation of high impact towers, where the land owner refuses permission.

causing health problems is proven. That is not a satisfactory state of affairs and if we applied that principle to all health risks many of the precautionary steps we take would be abandoned (eg with tobacco, with asbestos, DTD, thalidomide, leaded fuel etc).

We need a precautionary principle enshrined in the legislation along the lines of: "The Precautionary Principle states when there are indications of possible adverse effects, though they remain uncertain, the risks from doing nothing may be far greater than the risks of taking action to control these exposures. The Precautionary Principle shifts the burden of proof from those suspecting a risk to those who discount it."[7]

Research into tower affects has been flagged as urgent by the WHO for years - but has not yet occurred. Their own fact sheet about base station emissions is 6 years old and has not been updated despite the IARC increasing the risk rating for all EMR (the IARC do not limit it to mobile phones), to "2B: possibly carcinogenic to humans" in May 2011.

In May 2011, the Council of Europe raised serious concerns about the potential impacts of mobile phone towers and the need for proper application of the precautionary approach[8].

Australia's standard relative to international best practice

Other countries with extremely low EMR Standards for mobile telecommunications include Sweden and Israel.

France (COMOP trials)[9]

The French Government have made a commitment to reducing EMR output from towers significantly. Currently, 17 cities are trialling reduced mobile telecommunications facility output (2010 onwards – still underway) in a variety of terrains and population densities across the country.

Last year, the French Government also legislated that the sale of all mobile phones in France must include a hands free kit, to further reduce community exposure.

As industry argue that the output from their low and high impact towers is often less than 1% of the standard, I encourage Government to reduce our ARPANSA Standard in line with countries who are leading the way (above) – if industry's claims are true, a reduction of this nature would not impact their tower roll outs in any way.

Currently, towers can be constantly expanded and emissions increased (including increasing the power of existing panels) all the way up to 100% of the ARPANSA Standard before carriers breach their ACMA licence conditions – and all without community consultation or Council approval. No-one monitors output or compliance – not ACMA, not ARPANSA, nobody. Breaches of the standard would never be noticed except perhaps in investigating a cancer-cluster – cold comfort for the affected community!

Industry repeatedly claims that towers are mostly less than 1% of the standard. I am aware of a tower in Lennox Heads that has an output of 13.8% of the standard. This

[7] http://www.icems.eu/

[8] http://www.assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc11/EDOC12608.htm

[9] http://www.developpement-durable.gouv.fr/IMG/pdf/Rapport_COMOP.pdf

tower would be illegal in a number of countries around the world. Large numbers of towers are greater than 1%, including the facilities proposed for our own community. Importantly, towers can be added to and output increased to the limit without any further community or regulatory intervention.

Amendments that improve network design (18)

Current network design is focussed on reducing cost to industry rather on siting appropriately and minimising exposure and enhancing community amenity. It is normal that industry seeks to optimise profit, but government normally regulates to protect the public good in recognition that industry focuses elsewhere. Unfortunately the Act focuses too much on reducing costs to industry (ie by making communities bear the costs that would otherwise be borne by industry) and not enough on the public good. This may have been more appropriate when we had one national carrier building the national mobile voice infrastructure but now that we have at least four carriers competing for data subscribers it is surely time for them to wear more of the indirect costs of their activities and not rely on government to legislate those costs away. Amendments like that proposed at 18 are supported on that basis.

While on commercial issues, it unfortunately underlines industry's practice of using the price of spectrum licences as a bargaining chip in the debate over proper regulation (eg as warned by Chris Althaus at the industry's Comms Day conference in October, 2011). This argument and others that warn rollouts would halt if proper consultation and appropriate siting were to be required, show industry is happy to hold Government and the community to ransom over commercial considerations[10]. I urge the Committee not to be influenced by these commercial considerations but hold in the front of their mind the goal of resolving long standing community issues.

If the implication of AMTA's quotes is that poor regulation is the trade off for spectrum pricing, then that would be a very poor outcome for the nation. I urge the Committee to value good community outcomes. I firmly believe that the sorts of amendments proposed in the Bill will only enhance the value of spectrum licences by reducing uncertainty, reducing conflict with the community and encouraging proper planning, but also believe properly regulated markets inevitably have a higher value to participants and investors than poorly regulated ones.

Inter-jurisdictional buck-passing

One of the most frustrating aspects of the poor regulatory framework is that the three jurisdictions blame each other for the problems that communities face. Councils blame the Commonwealth and the state planning frameworks, states blame the Commonwealth and the councils and the Commonwealth palms issues off to the states and the councils. ARPANSA refers standard setting to ICNIRP, the ACMA relies on the industry ACIF Code, industry refers to the TIO, and around it goes – no-one is accountable! The High Court, in the matter of Hutchison 3G vs the City of Mitcham is pretty unequivocal on who has the guiding hand here – the problems of the Telecommunications Act belong to the Commonwealth and it is up to the Federal Government to fix them.

[10] http://www.amta.org.au/articles/AMTA.mobile.tower.bills.could.affect.spectrum.value

Amendments relating to exemption from State and Territory laws (21 etc)

As discussed above, the application of these proposed amendments to fixed lines, cable pits etc would take the amendments beyond what is required to resolve tower battles. This over-reach could be fixed through, for example, simply adding "***where the activity relates to EMR emitting facilities***" to the end of Division 7 36(1), and the end of 37(1), and leaving the rest of Division 7 as is.

Community Examples

Our experience

Ten months post notification: our community continues to battle to get appropriate siting of proposed mobile phone towers. The work is gruelling and has taken its toll on community members who have worked tirelessly to try and achieve a positive outcome, to work with carriers to find an appropriate workable alternative for Optus and Telstra, and the community alike.

Community members can't understand why it is left to them alone to fight the results of poor regulation, and why it is we lack an impartial regulator to resolve disputes. The TIO are limited by their own regulations to handling complaints from land owners or occupiers about land access issues only. The ACMA refused to review Optus's self assessment (low impact) which we felt was wrong and was subsequently proven to be the case (ie not low impact) through seeking legal advice – the only option open to communities and Council's who want to challenge a self assessment[11]. It is a serious concern that a carrier who has been working with the legislation for nearly 15 years could get it this wrong.

While both Telstra and Optus have withdrawn from their initial site proposal (just prior to Christmas), both are actively seeking alternatives and communication has not improved: we still have to chase information and make contact for any update.

As with most communities, our first knowledge about the proposal came in a junk-mail-like "To the Householder" envelope - the letter itself had no carrier logo and was from Aurecon (the planners working for Optus). Extensive door-knocking of neighbours and nearby businesses revealed approximately 25 residents had received notification (a further 15 weren't sure but thought they may have binned it unread thinking it was junk mail. Optus claimed they notified 120 to ACMA when we complained – quite a discrepancy). ACMA declined to investigate this Code breach.

The notification read as though the 15.8m high, three panel tower proposed for the middle of our busy, heritage listed residential area (with both residences backing onto the site and multi storey dwellings opposite at a similar elevation to the proposed tower) was a *fait accompli*. Nearby are a number of medical facilities, including a cancer clinic at the foot of the proposed tower, a neurologist within 50m and a two storey primary school perched on a hill nearby. The letter was written in bureaucratese.

Several community members rang Aurecon who told them that they could provide comment if they wished, but that moving a proposal to an alternative site was almost unheard of. In spite of this, our community banded together in response, and large numbers objected, evidenced by a 500+ signature petition, a large number of objection letters, a rally in front of the proposed site and two well attended community meetings.

Timeframes

The letter from Aurecon arrived a couple of weeks before the school holidays (19th May 2011). The notification period closed as the school holidays began (3rd June 2011). This put families with children in a very difficult position as many were unable to give it the attention they wanted to or respond at such a busy time.

The notification letter gave us a bit over two weeks to respond to the proposal – three days longer than the minimum 10 business days stipulated in the ACIF Code. Suddenly we needed to become experts in a complicated raft of regulations and

[11] http://acma.gov.au/WEB/STANDARD/pc=PC_1961

related information: the Telecommunications Act, the ACIF Code[12], the Telecommunications Code of Conduct, the Low Impact Facilities Determination, state planning requirements, council planning requirements, the ARPANSA exposure standard, the May 2011 IARC report the WHO based its upgrade of all EMR to class 2B- possibly carcinogenic to humans on, who are ICNIRP?, and so on - in order to make an informed decision and respond in a short space of time. For those in the community who don't email, they had the added time pressure of having to get a response in the post in time to reach Aurecon in Melbourne - mail takes around 4 business days to reliably reach Melbourne from Hobart.

Consultation

Optus met with a handful of community representatives two weeks after the consultation period closed (17th June 2011). The meeting reaffirmed that Optus were not going to consider community concerns and objections, but were there to state why they were going ahead anyway – lease negotiations were also well underway.

At the meeting, we were finally given a copy of the ARPANSA EME (electromagnetic radiation) report for the site (4 copies). The report showed a 500m radius from the proposed site was affected by the output. We had asked that a mock up of the tower be provided at the meeting. It was provided but did not show the large equipment boxes nearby or give more than one perspective to show a real sense of the scale of the tower (the angle chosen made the facility appear less imposing than other angles would have). The tower planned was over twenty metres above ground elevation and would ruin our beautiful heritage area – it would have been an eyesore.

We left our meeting feeling frustrated - we had wasted an entire working week morning to attend such a pointless meeting. People had taken the morning off work and come in good faith, but were bitterly disappointed by Optus's steadfast refusal to entertain the possibility of an alternative solution.

Community request an extension

After the meeting, we requested a further two weeks – Aurecon agreed. Despite our complaints about poor consultation and the large portion of the community who were not notified and so couldn't respond, the time extension was not offered but had to be asked for. Clearly other communities who do not ask would not receive this option. We wanted those in the community who had not been notified to be given the opportunity to respond to the tower proposal in their community.

Such a short response time for proposals unfairly disadvantages communities. We should not have to go cap in hand to ask for an extension and rely on the whim of carriers to say yes or no each time.

Only one community member ever received a reply to their questions but the partial response only arrived the day before the consultation period closed, making it impossible to consult with the broader community on the Carrier's response or to respond in kind.

As far as I am aware, no-one in our community has had a response to their objection to the site proposal (ten months later) and other questions, for example from the resident of a nearby multi-story property regarding the impact on them and their specific exposure levels, remain unanswered.

[12] Communications Alliance: Industry ACIF Code: Deployment of Mobile Phone Network Infrastructure

Incorrect self assessment by carrier

Under current self regulation, Carriers self-assess a proposed facility's high or low impact status. We disputed Optus's low impact assessment and asked the ACMA for assistance. We were told the ACMA do not make decisions about a proposal's high or low impact status, that it could only be tested legally.

Optus claimed that by removing a light pole and replacing it with a tower (a much broader and taller structure than the existing light, and with EMR emitting panels), and hanging a light fitting back on it, the tower was miraculously a light pole, and therefore low impact (this is a common ploy nationwide). We urged Hobart City Council to review the assessment and they subsequently engaged a QC, who confirmed it was high impact and thus required Council development approval.

Current legislation leaves communities to find carrier discrepancies in assessments themselves, under legislation that is both new to them and complex. Communities are further burdened for having to fight any error legally, in the absence of the regulator or the TIO providing assistance, an expensive option not many could pursue.

This is not acceptable, in any decent regulatory framework there would be a penalty for incorrect application of a framework that the industry has been working with for 15 years. Financial penalties and infringement notices should be added to the regulatory framework to improve proper application of the Act, the ACIF Code and the Ministerial Determination requirements.

Other consultation issues….. two towers (not one)

At our meeting with Optus, we raised our concern that other carriers could add to the site once the tower was installed and/or the site could be expanded with new panels by Optus without further consultation or Council approval as is allowed under the current federal regulations for low-impact facilities. We were assured there were no plans for other carriers or expansions. We were told that the tower they were installing only had the capacity for the transmitters planned.

We later discovered on a publicly assessable industry site archive[13], that Telstra had well advanced plans for a tower at the site – the report carried Optus and Telstra's logos jointly. Telstra were almost impossible to contact. We were finally able to confirm with Telstra (who did not contact us – contacting them was very difficult), that they wanted to erect a second tower next to Optus's. Although not on the same tower, it was the same small site. We found the EME report (dated 19th January 2011) the community had been given on 17th June by Optus was incorrect and showed only a third of the EMR output for the two towers (the joint EME Report was dated March 2011, prior to community consultation and our meeting with Optus).

By this stage, the poor communication, lack of answers, incorrect documentation, lack of will to find a more appropriate site and woeful consultation had undermined community trust in the carriers. Our community consultation amounted to lip service only – added to which, it was based on incorrect and incomplete information (ie: we were to get two towers, not one). The ACIF Code meant nothing.

Complaints – nowhere to turn

The TIO turned us away. We discovered the TIO are limited to dealing with infrastructure complaints from proposed site land owners and occupiers only, and only regarding access issues.

[13] www.rfnsa.com.au (AMTA: Australian Mobile Telecommunications Association)

We lodged a complaint to the ACMA about the perceived breaches of the industry ACIF Code, however the ACMA rejected our complaint once legal advice returned that the tower proposal was high impact – despite the complaint being about an actual process which ran to completion under their jurisdiction.

We contacted the Minister's Office, but were told he could not intervene - that we should try the ACMA. We said we already had – we contacted the Minister's Office as a last resort, we had tried every conceivable avenue for assistance without luck.

Common concerns

The problems faced by our community are common Australia-wide. Below are a few examples to reinforce with the committee the universality of community concerns and poor practices:

Tinderbox Tasmania – a tower site is identified by Telstra. The land owner agrees to the installation and Council receives no objections to the site. Telstra then decide not to proceed with the proposed site but submit plans for a new site much closer to Tinderbox residences and the Tinderbox Nature Reserve which is home to the threatened Forty-Spotted Pardalote. Only the four nearest residents are notified. Residents are very unhappy and strongly object to Council and Telstra.

It is later discovered that the original site that bothered no-one was abandoned in favour of the new site to reduce the cost of installing power lines. Cost should not be able to be used as reason for avoiding the application of the precautionary principle. In an effort to save cost, the second site even compromised service delivery – it offered inferior coverage[14].

This is a good example where cost is the driver for siting (eg placing towers near to power and optic fibre lines) rather than service delivery (ie: coverage) or minimising EMR exposure to the community and the environment. Massive community action was needed to get the old site re-instated. The community is still on hold waiting to hear Telstra's final plans – 6 months later (so much for community consultation causing delay!).

Hobart City Council – an FOI request for all facility notifications to Hobart City Council for the period January to August 2011, showed most of the 18 sets of documentation provided by carriers had some sort of error or inconsistency with other documentation (eg cover letter didn't match EME plans, EME plans didn't match the industry site archive website[15]) – only a couple seemed to be in accord. As Council are locked out of low impact facility siting processes under Federal legislation, it is not surprising they don't waste time trying to correct errors.

The inconsistencies are an example showing how poor regulation has led to industry taking no care. These sorts of errors and inconsistencies are also consistently found in community documentation. Consultation with Council and communities based on inaccurate information is unacceptable. The poor standard begs the question about who does have the correct information.

Bawley Point NSW – Crown Castle, a tower developer who sub-lease to carriers and maintain Carrier facilities for them, claimed not to be covered by ACIF Code in its submission for a tower. The tower purported to comply with NSW's Complying Development planning regulations for infrastructure - but was actually considerably

[14] Telstra documentation submitted to Kingborough Council, 2011

[15] www.rfnsa.com.au The official, but poorly maintained, industry mobile telecommunications site archive (from 2003).

higher than the 50m permitted (13.8m higher). No EME Report was ever provided to the community. Many months have passed since the community originally pointed out the omission and asked for the report. It has never been provided.

This is another example of where the ACIF Code and the regulations generally, are lacking – the ACIF Code doesn't cover all participants. No care is taken with documentation by the industry because there is no consequence for incorrect assessments against Codes and planning schemes, or where communities are not provided all or accurate information. ACMA does not regulate and there is nothing to prevent this practice.

This example also highlights the importance of regulations uniformly referring to a consistent and adequate "tower" definition in the Federal legislation due to its flow on effect. The height of a tower should be measured from the base to the very top of the structure including header mounts, panels, dishes, antenna, etc.

The current lack of consistency means some are able to deem a facility metres shorter than its actual height (up to 6m in some cases), allowing creative Complying Development and low impact assessments, when clearly in reality, they exceed the height limitations and should be subject to planning approval.

The effect of the Federal Act is that State Government planning is over-ridden and towers that would normally require Council approval also become subject to the confusing "tower" definition. The limited "tower" definition allows for some high impact towers (which should automatically require Council approval) to pass under the height limits for structures in certain zones thus avoiding planning approval, when in reality they shouldn't – it is an unintended effect that negates the intended Council approval for high impact facilities.

Churchable Qld – EME reports provided to the community referenced only one panel, although Telstra subsequently told the community it was for six even though three were stated in the notification letter, to be following by a further nine (12 to 15 panels altogether). The consultation paperwork was far from correct. The community has since discovered that the NBN Co are planning a facility nearby but the details are hazy and the community have been unable to get the details. Once again, the community is left to chase the carrier repeatedly for information. Optus are advertising developments in the area but the community cannot find out whether co-location is planned. This is an example of the community being poorly informed because there is no consequence to the industry if they do not meet the ACIF Code's intent. The ACIF Code is, sadly, largely aspirational with lots of "should" this and "have regard to" that (ie not enforceable).

Again, this community are not against a tower being built, but they would like to be properly informed and properly consulted. They want the site to be right from the start, after all it will likely expand as further capacity is added in the future. Getting it right up front is not unreasonable in anyone's book.

Bardon Qld – this was a tower proposed to be built on a very small block of private flats sited in a dip between properties. It meant that the proposed panels would emit at close to the level of the nearby houses. The tenants and owners were told they could agree to a lease or refuse, and get the low impact tower anyway[16]. It was also very close to a local primary school. Again, the notification letter came just before the school holidays. The community fought hard to try against Telstra, who took not one backward step, until Bardon took the only option left and spent $20,000 in the tribunal - and won. Prior to legal action, the community had lodged complaints with the TIO

[16] Telecommunications Act, Schedule 3:Part 1, Division 1, Clause 1: Powers and Immunities

and the ACMA but they failed to help. Again, they had nowhere to turn. This unfairly weighted battle dragged on for 12 months. This is an example of poor consultation and poor consideration of community sensitive sites (in contravention of the ACIF Code). Once again, the EME reports provided to the community were wrong.

Thornbury Vic – this community has a high proportion of people of a non-English speaking background (this is well known) but they were given no dispensation in the process for the fact that they were non-English speaking (ie no translation of documents, extended timeframes etc). The proposed site was a shop with a residence upstairs. The owner of the lower floor and the lower floor tenant both refused permission for the low impact tower proposal and the local community objected strongly to the proposed site. However, this didn't stop the carrier self-issuing a LAAN (Land Access and Activity Notice) to undertake the build anyway (Telecommunications Act, Schedule 3: Powers and Immunities: Part 1, Division 1, Clause 1). Carriers are quite happy to ignore even the wishes of the landowner. Exhausted and utterly disheartened after trying any possible avenue - the ACMA (no help), the TIO (no help), lobbying the carrier by their supportive federal MP, etc – but all to no avail (and after a protracted 12 month battle), the small business owner on the ground floor of the building decided to move at great expense and inconvenience.

Warrandyte Vic – This battle went on for over 2 years stretching this community to its absolute limit. 1300 local residents signed a petition against the development location for high impact tower to be built in close proximity to a childcare centre and other family services (community sensitive sites). Complaints to ACMA, the TIO and the Minister achieved nothing. Vodafone did not withdraw and refused to look at alternatives despite the overwhelming opposition to the site in the community. The tower site has finally be overturned, but only as a result of Council refusing to sign a lease for the site (a LAAN can not be issued for a high impact tower).

Gladstone Base Hospital Qld – a tower was built on top of the hospital itself, evidencing no attempt by the carrier to avoid community sensitive locations and in the face of a huge outcry from hospital staff. As an aside, Carriers will often claim that the safest place to be is right under the tower – while this might be theoretically true it is not necessarily true in practice, depending on the topography and nature of the surrounds, as evidence by recent EMR measurements taken at Sandown Park in Tasmania suggesting a hotspot near the base of the tower.

Craignish Qld – this tower is "attached" to a Council water tank. According to the community, the latest design shows the tower (over 10m) would be attached to the tank with one 10mm bolt. The community have had the drawings reviewed by an engineer who has advised them the bolt does not offer any structural support for the tower, but acts as an attachment to the tank, that it is really free standing and offered structure stability by the large steel struts that connect it to the new concrete equipment shed a couple of metres away.

The community is highly sceptical about Optus's "low impact" self assessment (under the Telecommunications Low Impact Facilities Determination 1997, if a facility is not free standing but "on an existing public utility structure" – in this case, a water tank, it is "low impact"). The community are now faced with challenging this legally at enormous personal cost, in the absence of any independent review body.

This community objected strongly and like others, tried everything only to discover they were powerless. I understand they have recommending scoping for a more appropriate site that still meets their needs but is not right on top of residences, but to no avail.

The community has spent well over $12,000 on legal fees so far in the absence of any other avenue or assistance. Optus have not even returned letters from the

community's lawyer. Again, the ACMA, the TIO and the Minister's office have been unable or unwilling to intervene when contacted for help. No-one will challenge the low impact self assessment. The battle continues, 12 months on.

Lennox Heads NSW – This community objected very strongly to Optus's proposed three low impact towers, to be mounted on large brackets on a Council water tank sandwiched closely between residences 4 metres away. Only four residents received the notification from Optus and despite a lengthy and detailed complaint to the ACMA and written evidence, Optus were not sanctioned. The ACMA's response to this and other complaints about perceived breaches of the ACIF Code was so slow (the battle was over a year), that the towers were in by the time it was formally investigated. Over 100 residents objected to the proposed site to Optus, and complaints about lack of consultation and lack of communication followed to the TIO and the ACMA - but neither could/would help.

By mounting the towers on a water tank, Optus were able to run their development as low impact[17] avoiding all Council approval processes. Ballina Council claim they refused permission for access to their land for these towers. The powers and immunities afforded to carriers under the Telecommunications Act's give carriers the legal ability to install them against their wishes anyway.

This community tried everything they could to try and rally Optus's interest in looking at an alternative, but it fell on deaf ears and their concerns were roundly ignored. The three towers are now up.

Sandown Park, Tas – This tower was constructed in a residential area on the edge of a busy park directly opposite houses and apartments, some double storey - and close to an extremely busy children's playground. The tower site is in a known feeding ground for the threatened Swift Parrot but, despite a report from Biosis recommending the site be referred to the Minister for the Environment, no referral was made. I understand this is a requirement of the Act. The Council sought an indemnity from the Telstra against future health risks but none could be gained (surprising given industry claims that there are no health risks!), subsequently a nearby resident has developed constant tinnitus and had to move.

Sellick's Beach, SA – This community has been battling a tower proposal for nearly 12 months. The community objected strongly to both Council and Telstra. Council rejected the proposal last year, however Telstra appealed the decision. Telstra lost, the planning decision was upheld. Telstra are still not satisfied and have told Council and community they are appealing again, but in the Environment, Resources and Development Court this time.

If industry are genuine about community consultation and the intent of the Code, why appeal a decision based on an overwhelming objection (and twice appeal it), forcing Council and the community to incur large court costs to continually fight appeal after appeal (and for long periods), wearing them down financially and emotionally as they go? When Telstra can rely on deeper pockets with a $3.88 billion dollar annual profit last year, it is an unbalanced battle on a large scale.

[17] Telecommunications (Low Impact Facilities) Determination (1997), Part 7 Item 2

As I stated above this is only a small sample, I refer committee members to the No Towers Near Schools site map[18] detailing a more comprehensive list of tower battles (close to 200).

Summary

Communities are suffering unnecessarily in the face of poor and outdated regulation that gives industry unreasonable and coercive powers, and the community no power at all.

No-one is arguing against towers or telecommunications facilities, just against the lack of regulation, poor siting practices, poor consultation and a lack of any real community input.

As technology changes at an ever increasing pace, towers constantly expand and networks are infilled (ie more new towers and larger, higher emission existing towers) in response, these issues are becoming more pressing. All industries must adapt their practices over time in response to regulatory change and other externalities and the telecommunications industry is no different.

The proposed changes stand to benefit industry and simply serve to legislate principles industry claim they are wholly committed to: community consultation and appropriate siting, Whilst I understand industry will be nervous about any change to such a long standing powerful regulatory framework, the Bill has the opportunity to provide unambiguous guidelines, providing clarity and by reasonable extension, more efficient roll outs with fewer disputes.

I strongly support the bill and thank you for your consideration of my submission. Please don't hesitate to contact me for further information.

Anthea Hopkins

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[18] http://www.notowersnearschools.com/othercomm.html