

# Australian Greens – Dissenting Report

## Summary

1.1 The Telecommunications Legislation Amendment Bill 2018 includes two measures. The first is to allow access to NBN towers by emergency service organisations and the second is to specify temporary telecommunications towers as low-impact facilities.

1.2 The Australian Greens support the intent of this bill and we strongly support access to telecommunications services during emergencies. We support Schedule 1 of the bill.

1.3 We support the components of Schedule 2 that pertain to emergencies and unplanned outages. However, we do not support carrier immunity to local planning rules and processes for events, seasonal demand, and scheduled maintenance.

## Issues relating to Schedule 2

1.4 The WA Local Government Association<sup>1</sup> (WALGA) and the Australian Local Government Association<sup>2</sup> (ALGA) both support making NBN towers accessible to emergency services and simplifying the regulations around the provision of temporary towers for emergencies and emergency maintenance. However, they do not support the exemption of temporary towers from state, territory, and local planning approvals for events, holidays, or schedule maintenance.

1.5 WALGA notes in their submission that:

WALGA does not support the notion that events and seasonal demand are either emergencies or are unduly subject to "delays imposed by lengthy development and approvals and processes". These conditions are clearly predictable and should therefore be subject to normal planning provisions.

Current protocols and procedures covering event management are well established, with Local Government and/or affected land-owners consulted about temporary structures and services...The importance of this interactivity with Local Government cannot be under-stated as the Local Government invariably retains responsibility for the amenity, aesthetics, safety and well-being of event attendees, local residents and business owners. We do not consider Telecommunication Carriers to have a sufficiently compelling case to bypass these important planning provisions.

A similar argument exists for seasonal demand. This is clearly a predictable situation and should not be beyond the capacity of Carriers to plan ahead with reasonable confidence. Once again, Local Governments have a range

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1 WALGA, *Submission 4*, p. 1.

2 ALGA, *Submission 8*, p. 1.

of permit and/or planning options to allow for a mutually-satisfactory outcome and bypassing this requirement is likely to lead to more conflict than cooperation.

Where unique local attributes exist, such as heritage or other local considerations, it is reasonable to expect that Local Government will be well-informed about them. Taking advantage of this local knowledge, rather legislating it into irrelevance, seems to us to be a sensible approach with a clear public benefit.<sup>3</sup>

1.6 ALGA note in their submission that:

Local Government plays an important role in land use planning and development approvals systems in all State and Territories in Australia. Local Governments work closely with their local communities to plan and manage development, while considering a complex array of issues, to deliver liveable communities now and into the future.

Local Governments administer the development assessment process and are able to grant approval, grant approval with conditions, or refuse an application. The controls regulate densities, height, external design and siting, building materials, open space provisions, and in some jurisdictions the level of developer contribution required to cover physical and/or community infrastructure costs arising from the proposed development. Local Governments also have control over the demolition of buildings. Development control also seeks to address a wide range of environmental, social and economic issues. This includes heritage and environmental protection issues. It also considers safety aspects of proposed developments.<sup>4</sup>

1.7 ALGA also note in their submission that:

Installation of temporary mobile infrastructure without due consideration of safety, heritage and areas of special cultural, landscape, or environmental value as would occur during development assessment could potentially have significant consequences.<sup>5</sup>

1.8 The majority committee report<sup>6</sup> states that the 'department's submission provided the rationale for the temporary facilities amendments'. However, the department's submission does not provide a justification for the need to exempt carriers from local planning processes in the case of events, holidays, and scheduled maintenance that can be planned for well in advance.

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3 WALGA, *Submission 4*, pp. 1–2.

4 ALGA, *Submission 8*, p. 2.

5 ALGA, *Submission 8*, p. 2.

6 Majority committee report, p. 9.

1.9 The majority committee report<sup>7</sup> also notes that the department's submission states that in some jurisdictions planning approval is not required, including New South Wales and Victoria. However, the Telecommunications Industry Ombudsman (TIO) notes that:

If enacted, the reforms would provide a national regime by extending federal carrier powers and immunities for inspect – install – maintain activities for portable temporary facilities. The national regime would then override the NSW and Victorian regimes and go much further than those state regimes.<sup>8</sup>

1.10 The TIO<sup>9</sup> also states that portable facilities should only be classified as temporary if they cannot remain at a location for longer than a maximum period (30 days) and that the carrier should be prohibited from relocating or repositioning the facility to circumnavigate the maximum period or replacing the portable facility with a similar portable facility at the end of the 30 day period. The TIO notes the need to prescribe a maximum period for carrier maintenance and the unnecessarily long periods allowed for events and holiday periods. The TIO states that:

The regulatory framework should not assume carrier compliance and should set well-defined limits on carrier powers and immunities so there is certainty as to what carriers are lawfully permitted to do. A regulatory framework that has clearly defined parameters can assist the regulator (the ACMA) in performing its monitoring and compliance role.<sup>10</sup>

## **Recommendations**

### **Recommendation 1**

**1.11 The Australian Greens recommend passing Schedule 1 of the bill.**

### **Recommendation 2**

**1.12 The Australian Greens recommend passing Schedule 2 of the bill, amended to remove provisions relating to events, holiday periods, and scheduled maintenance.**

**Senator Janet Rice**  
**Deputy Chair**  
**Senator for Victoria**

**Senator Jordon Steele-John**  
**Senator for Western Australia**

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7 Majority committee report, p. 9.

8 Telecommunications Industry Ombudsman, *Submission 3*, p. 1.

9 Telecommunications Industry Ombudsman, *Submission 3*, pp. 4–5.

10 Telecommunications Industry Ombudsman, *Submission 3*, p. 4.

