

ALGA SUBMISSION TO THE PRIVATE SENATOR'S BILL INTO THE TELECOMMUNICATIONS AMENDMENT (MOBILE PHONE TOWERS) BILL 2011, MARCH 2012

ALGA appreciates the opportunity to make a submission to the Senate Environment and Communications Legislation Committee's inquiry into Senator Bob Brown's Private Senator's Bill, the *Telecommunications Amendment (Mobile Phone Towers) Bill 2011*, which was introduced to the Senate in September last year.

The submission has been prepared by the Australian Local Government Association (ALGA). ALGA is the national voice of Australia's 560 local councils. Its membership is comprised of the state and territory local government associations across the country, with the Government of the ACT also being a member of ALGA, reflecting its unique combination of municipal and territory functions. ALGA has consulted its member associations and the comments made in this submission should be read in conjunction with submissions from state and territory associations and individual councils.

Senator Brown's Bill, the *Telecommunications Amendment (Mobile Phone Towers) Bill 2011* proposes a range of changes in relation to mobile phone towers. It proposes removal of the exemption for low-impact facilities – an issue which has caused concern to councils and communities. Additionally, it proposes a review of radiation standards every five years; requires carriers to prepare network plans every year; requires carriers to use the precautionary principle in all sitings; and proposes increased consultation for new tower installations.

Councils have raised concerns about these issues over several years at successive National General Assemblies of Local Government, specifically, the need for increased consultation, improved planning processes, concerns over electromagnetic radiation, and avenues of appeal against decisions. On the basis of these views, local government is supportive of enhancing the level of community consultation in the decision-making process for the installation of all telecommunications infrastructure, a more strategic and forward planning approach, and ensuring that decisions are informed by rigorous health evidence.

ALGA has not had the opportunity to consult widely on this Bill, but the position expressed in this submission is informed by feedback from state and territory associations and councils on the proposed Bill, as well as the views expressed to ALGA by state and territory local government associations and council representatives at National General Assemblies over several years.

The *Telecommunications Act 1997* governs the installation of telecommunications infrastructure. It aims to strike a balance between the needs of telecommunications companies and rights of landholders and local communities about the effects of the infrastructure rollout in their local area. The Australian Media and Communications Authority (ACMA) is the Commonwealth Government regulator for broadcasting, the internet, radiocommunications and telecommunications and specifies the requirements and exemptions for telecommunications infrastructure.

The ACMA website (http://www.acma.gov.au/WEB/STANDARD/pc=PC_1696) specifies that "When installing large telecommunications facilities such as mobile phone towers,

telephone companies generally need to obtain local council planning permission and comply with relevant state and territory planning laws. However, telephone companies licensed by the ACMA as 'carriers' may install a limited range of facilities without seeking state or territory planning approval. The most common of these are 'low-impact facilities'. A carrier authorised under the Telecommunications Act to install a low-impact facility is not subject to some state and territory laws, including town planning and environmental laws.

Low impact facilities are those facilities which, because of their size and location, are considered to have low visual impact and be less likely to raise significant planning, heritage and environmental concerns. The Telecommunications (Low-impact Facilities) Determination 1997 (LIFD) lists types of low impact facilities.

Since the inception of the *Telecommunications Act 1997*, local government has consistently expressed concern about this exemption and has sought to have this addressed. Local government strongly believes that town planning and planning approvals processes are the primary mechanism to ensure that a balance is achieved between the needs of telephone companies and the rights of landholders, occupiers, residents and the local community. Exemption from these requirements have given rise to the need for a separate arrangement outside the normal planning system (the Telecommunications Code of Practice 1997) to ensure that telecommunications companies at least consult with councils, key stakeholders and the community on these installations.

The location and number of mobile base stations, as well as the potential health risks from their proximity to schools and day care centres, has caused a great deal of community and local government concern in the past. There is a high level of community and council concern over the siting and impact of mobile phone towers as well as the long-term health risks associated with electromagnetic radiation. For many years local government has argued that telecommunications infrastructure should be subject to planning and development regulations, to ensure the deployment of mobile base stations occurs in a way that is sensitive to the needs of the local community, minimizes visual impact and takes into account health and environmental considerations. ALGA supports the use of the precautionary principle in relation to any sitings and upgrades which increase electromagnetic emissions.

However, councils are also aware of the balance needed between the growing demand for phone coverage and data capacity and the community's wish to be properly consulted on the siting of the infrastructure. Local government accepts that the low impact facilities regime under Schedule 3 of the Telecommunications Act is designed to facilitate the efficient rollout of certain types of facilities, maintenance and upgrades of telecommunications infrastructure. Many councils have supplemented the requirements of the LIFD with their own requirements on siting and visual impact.

Although there have been complaints over the years about some low impact facilities, the vast number of complaints and controversy relate to freestanding telecommunications towers.

In evidence to the House of Representatives Infrastructure and Communications Committee inquiry into the Mr Andrew Wilkie's Private Member's Bill (*Hansard*, House of Representatives Infrastructure and Communications Committee, *Telecommunications Amendment (Enhancing Public Consultation) Bill 2011*, 17 February, page 12) ACMA provided statistics of complaints Under Schedule 3. Last year one complaint and 32 inquiries were received under Schedule 3. In contrast, 13 complaints and 104 inquiries were received in relation to breaches of the mobile network code involving freestanding towers.

Senator Brown's Bill would remove the low impact facilities determination (LIFD) and require all telecommunications tower installations, including minor maintenance and upgrades to require development approval, and require notification of owners and occupiers within 500 metres of a telecommunications facility. A tower is defined to be "a tower, pole or mast and includes any mounting piece, bracket, header, spacer, remote radio unit, antenna, dish, aerial or similar structure".

Currently, minor installations, upgrades and maintenance are specified under Schedule 3 as low impact, to avoid individual approvals being required each time infrastructure is upgraded or maintained. ALGA notes that while local government is fully supportive of enhanced consultation processes in relation to mobile base stations, this does not extend to all minor activities, maintenance, and upgrades.

For example, under the Bill installation of each satellite dish, aerial, antenna and all maintenance of faults and routine upgrades will require a development approval process, notification of all residents within a 500 metre radius, with a 30 day notice period. This might conceivably lead to delays, customer frustration, increased costs and increased number of complaints.

Restoration of services after a natural disaster relies on a quick response and prioritization of work may be affected by the provisions of the Bill. Requiring a development application process for each approval would appear to be unproductive. Capturing natural disaster restoration in the amendment may be an unintended consequence of this Bill and ALGA would suggest that the exemption remain in cases of natural disasters.

In response to a request from ALGA, the Local Government Association of Tasmania (LGAT) provided a copy of the newly developed planning template for Tasmania (http://www.planning.tas.gov.au/_data/assets/pdf_file/0020/171128/Planning_Scheme_Template_for_Tasmania_May_2011.pdf) which sets out the new law for new schemes and exemptions. It may be useful for the Committee to see how this situation is being handled in Tasmania. It is also important to note that each state will have different legislative arrangements and the implications of Senator Brown's Bill may be different in each State and Territory.

The LGAT has conveyed representations from councils regarding the proposed removal of the LIFD for minor maintenance. Feedback from its members in relation to new towers advocate a more strategic approach, forward planning, increased consultation on siting and a more transparent and publicly accountable process, and regulation to impose more obligations on carriers to improve their processes. Currently, even when carriers abide by

the statutory requirements, there is limited opportunity for public comment which may not deal with either visual issues and do not cover health issues. Councils support a more forward looking, strategic approach to public consultation and local government welcomes the Bill's requirement for carriers to develop a yearly Local Telecommunications Network Plan detailing the carrier's proposed telecommunications network layout for the next 5 years.

The experience of some Tasmanian councils with the NBN rollout requiring approvals for minor infrastructure such as new power poles, has been described as unnecessary administration. These councils support minor installations and maintenance being retained under an LIFD exemption.

ALGA has consistently argued that irrespective of whether the mobile base station is constructed on a low-impact facility or whether it requires a Development Application, consultation and notification is good business practice and leads to better outcomes in the community. ALGA has welcomed the requirement under the new Industry Code of Practice (to come into effect on 1 July) that a consultation plan be developed for deployment of mobile base stations not subject to Development Approval (ie low-impact) as a significant improvement. The Code is premised on the fact that public health and safety is of paramount importance in relation to both low-impact and high-impact facilities, and that a precautionary and more consultative approach should be adopted by carriers when deploying mobile base stations. This is an important improvement. ALGA would note that the Code relates to low impact facilities and if the LIFD were to be removed, it would appear that the continued operation of the Code would be in doubt.

ALGA supports the intention of Senator Brown's Bill to seek to mandate the precautionary principle and to increase the emphasis on health risks and increasing the evidence base of the science through a review every 5 years by the Australian Radiation Protection and Nuclear Safety Agency of the standard relating to human exposure. Many councils have stressed the need for health concerns to be more adequately addressed and for the opportunity for broader community input.

ALGA notes that the *Telecommunications Amendment (Mobile Phone Towers) Bill 2011*, if passed by Parliament, would come into operation on the date on which it receives Royal Assent. ALGA points out that it would be preferable for local government if there were to be a transition period incorporated into the legislation. This would capture installations which were part-completed under the old processes to be transitioned to the new arrangements and allow a period of time for the new arrangements to be communicated.

New telecommunications towers and some extensions to existing towers have caused controversy in the past. The ongoing controversy surrounding this issue demonstrates the level of community concern and is damaging to both carriers and local communities. The 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.

In conclusion, while ALGA supports the intention of the Bill to increase public consultation and provide greater transparency in planning siting and installation, as well as a greater emphasis on addressing health and safety concerns, ALGA has concerns about potential unintended consequences and delays, particularly in relation to restoring services in emergencies and for minor maintenance, minor installations and routine upgrades.

ALGA

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