**ALGA SUBMISSION TO THE PRIVATE MEMBERS BILL INTO THE TELECOMMUNICATIONS AMENDMENT (ENHANCING COMMUNITY CONSULTATION) BILL 2011, FEBRUARY 2012**

This submission follows an invitation from the House of Representatives Standing Committee on Infrastructure and Communications Committee to respond to the Private Members Bill the *Telecommunications Amendment (Enhancing Community Consultation) Bill 2011,* introduced by Mr Andrew Wilkie MP to the House of Representatives 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's President represents local government as a member of the Council of Australian Governments and several other ministerial councils. 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.

This submission will not address the specific provisions in the Bill, as ALGA has not developed a national position on the Bill. Nor have we had the opportunity to consult widely with councils and with state associations on the provisions of the Bill. Rather, this submission is based on the views expressed to ALGA by state and territory local government Associations and council representatives at successive National General Assemblies for Local Government on the need for improved planning, including community consultation, for all telecommunications infrastructure over the past decade. 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 telecommunications infrastructure.

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. ACMA provides a clear explanation of the requirements and exemptions for the installation of telecommunications facilities (refer to the guide for consumers fact sheet on the website at http://www.acma.gov.au/WEB/STANDARD/pc=PC_1696).

In summary, the key issue from a local government perspective is that while the installation of large telecommunications facilities are required to obtain planning approval, low impact facilities are exempt from this requirement. The ACMA site 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 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 of 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. 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.

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.

Mr Andrew Wilkie's Bill to amend the Telecommunications Act 1977 coincides with the release of a new Telecommunications Code of Practice – the *Mobile Base Station Deployment* Industry Code C564:2011, due to come into operation on 1 July 2012. The new Code aims to supplement the requirements already imposed on carriers under the existing legislative arrangements. ALGA provided input to the consultation draft of the new Code and as a result of ALGA's recommendations, the timeframe for councils to review consultation plans has been extended from 5 to 10 business days, with a further 5 business days if requested. There is also an extended timeframe for community consultation from 10 to 15 business days.

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

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. The requirement under the new Code that a consultation plan be developed for deployment of mobile base stations not subject to Development Approval (ie low-impact), is a significant improvement and is welcomed by ALGA.

ALGA notes that the *Telecommunications Amendment (Enhanced Community Consultation) Bill 2011* introduced by Andrew Wilkie is designed to apply to installation and maintenance activities under Schedule 3 of the *Telecommunications Act 1997* – those designated as low-impact facilities. 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 despite local government being fully supportive of enhanced consultation processes in relation to mobile base stations, increasing the consultation requirement for minor activities, such as maintenance, may cause unintended consequences for consumers and for councils. For example, requiring minor maintenance of facilities or fault repairs to be notified in writing to all residents within a 500 metre radius, with a 30 day notice period, might conceivably lead to delays, customer frustration, increased costs, increased number of complaints, and telecommunications downtime.

From 1 July 2012 the new Code will come into effect and will apply to the telecommunications towers classified under Schedule 3. The improved consultation process under the Code appears aimed at addressing issues similar to Mr Wilkie's legislative proposal to mandate increased consultation. The Committee may wish to investigate with Mr Wilkie whether the Code would satisfy some of his concerns.

Extensions to existing towers have caused controversy in the past. Under the low-impact facilities determination, carriers have the ability to extend an existing tower once, by up to 5 metres, in rural and industrial areas. In other cases it requires Development Approval. The ongoing controversy surrounding this issue demonstrates the level of community concern and is damaging to both carriers and local communities. It suggests this issue requires further clarity and a better mechanism for communities to understand developments, their impacts and their consequences, as well as the need for a fair and reasonable process of appeal where matters cannot be resolved through standard processes.

ALGA
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