

12 August 2020

Steve J. Toneguzzo
Environment & Communities Safe from Radiation Inc.

Via email: info@ecsfr.com.au

ACMA file reference ACMA2020/354-1

Dear Mr Toneguzzo

RE: Open letter to the ACMA – Request for evidence

I refer to your email of 9 July 2020 which attached an 'open letter' to the ACMA expressing concerns about the ACMA's response to community complaints made under the Communications Alliance Ltd Industry Code C564:2018 Mobile Phone Base Station Deployment Code (the **Deployment Code**).

Your correspondence raises a number of issues related to the ACMA's regulatory functions, some of which have been presented to us recently by organisations of a similar nature to the Environment & Communities Safe from Radiation Inc. We have addressed these below by reference to the three headings in your letter. We have also provided contact details at the end of this email for the relevant agencies that may be able to assist in addressing concerns outside the ACMA's remit.

The regulatory framework and the ACMA's role

The ACMA regulates electromagnetic energy (**EME**) from fixed radiocommunications transmitters, including those transmitters using 5G technology, by imposing licence conditions through the Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015.

Under these conditions, licensees must ensure that EME exposure from their transmitters do not exceed the levels set in the Australian Radiation Protection and Nuclear Safety Agency (**ARPANSA**) Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields - 3 kHz to 300 GHz (2002) (the **ARPANSA Standard**) at any location accessible by the general public.

ARPANSA is the Australian expert body for advising on and settling the EME exposure levels which the ACMA enforces through our regulatory mechanisms.

In addition, the ACMA's role in relation to the roll-out of mobile phone base station infrastructure (at a new or an existing site) is to ensure that carriers comply with the regulatory regime that includes, among other things, the Deployment Code.

The purpose of the Deployment Code is to ensure that local communities and councils are informed and consulted when a mobile phone base station facility is proposed in their local area. The ACMA is able to consider whether carriers have complied with the Deployment Code. If a breach of the Deployment Code is found, the ACMA has the power to:

- issue a formal warning, or
- give a direction to comply with the Deployment Code going forward (such directions do not apply retrospectively).

If a carrier has been given a direction and subsequently breaches that direction (for example, by contravening the Deployment Code again), the ACMA can issue an infringement notice or commence proceedings in the Federal Court seeking a financial penalty.

The ACMA considers community complaints and scrutinises mobile carriers' compliance with the Deployment Code. It is not, however, within the ACMA's regulatory remit to stop the construction of a proposed facility.

Health and safety of mobile technology

Your letter makes assertions and raises several concerns including about the deployment of 5G mobile technology and the health and safety of mobile technology. These are not relevant to the scope of the ACMA's assessment of complaints under the Deployment Code and are accordingly not matters on which we have responded.

Alleged ACMA conflict of interest

The ACMA rejects your assertion that there is any conflict of interest in how it fulfils its role to ensure compliance by carriers with the Deployment Code arising from its statutory responsibilities in allocating spectrum rights.

The ACMA undertakes its role in spectrum planning and management and the allocation of spectrum licences in an open and transparent manner. Information on our spectrum management activities are publicly available in the [Five-Year Spectrum Outlook](#) and the ACMA consults annually on its spectrum work program. The ACMA also reports annually on its spectrum management activities through our work program and annual report.

The ACMA's funding and performance outcomes are not tied to radiocommunications licensing revenue. All funds raised through the spectrum auctions managed by the ACMA is returned to Consolidated Revenue for the benefit of Australian taxpayers.

Lack of evidence

You have asserted that the assessment of complaints under the Deployment Code hinge on the assumptions stated in your letter. That is not correct.

Our examination of a complaint about a carrier's compliance with the Deployment Code is independent and based only on evidence relevant to a carrier's obligations under the Deployment Code.

Precautionary approach

You have made a number of representations about the relationship between the Precautionary Principle and the Deployment Code that do not reflect the role given to that principle by the Deployment Code.

The Deployment Code contains several objectives as set out in clause 1.4, one of which is to apply a Precautionary Principle to the deployment of mobile phone radiocommunications infrastructure (**mobile facilities**). With these stated objectives the Deployment Code prescribes specific requirements on carriers in relation to the deployment of mobile facilities.

Appendix A to the Deployment Code discusses the Precautionary Principle and identifies elements of a risk analysis to consider in the siting of mobile facilities. This discussion in Appendix A does not impose specific obligations on carriers. In discussing the Precautionary Principle, Appendix A also refers to advice of the World Health Organization on [Electromagnetic fields and public health](#) and ARPANSA on [Mobile phone base stations and health](#).

More specifically, clause 4 of the Deployment Code sets out certain requirements on new site selection, design and operation and the application of the Precautionary Principle, thereby building specific requirements around the general objective relating to the Precautionary Principle.

In response to the assertions made in your letter, to date the ACMA's audits, assessments and investigations have not provided evidence to suggest that mobile carriers are ignoring the Precautionary Principle (insofar as the Deployment Code imposes specific obligations in applying that principle) and that the community and councils are being denied an opportunity to participate in the decisions made by carriers.

Your correspondence raises a number of other matters that do not relate to the ACMA's regulatory functions. In respect of your various requests, via the ACMA, to other entities, it would be more appropriate for you to take those matters up directly with those other entities.

Contact details are as follows:

- ARPANSA - info@arpansa.gov.au; media@arpansa.gov.au
- Department of Health [online complaint form](#)
- Department of Infrastructure, Transport, Regional Development and Communications - clientservice@infrastructure.gov.au;

Finally, I note that 5G is regulated under the same arrangements as all other telecommunications technology. This includes the processes by which carriers engage with stakeholders on deployment matters and the standards for exposure to electromagnetic energy (EME).

Yours sincerely

Allan Major
Executive Manager
Licensing & Infrastructure Safeguards Branch