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Our mission is to ensure that environment & communities are safe from harmful electro-magnetic radiation.

OPEN LETTER

The Australian Communications Media Authority (ACMA)

Via e-mail: Telephone.Service.Regulation@acma.gov.au

Dear ACMA,

We wrote to you on 9 July 2020, noting the duty of care ACMA owes the general public and requesting the answers to specific questions (attached).

ACMA replied on 12 August 2020 (attached). Thank you for providing specific responses.

In response, we raise several serious matters and highlight our specific questions, numbered for reference, and identified by the color red.

The Regulatory Framework and ACMA's Role

ACMA (and other government agencies) defer to ARPANSA (and ICNIRP) as 'Health Authorities', yet both ARPANSA and ICNIRP have disclaimers and specifically ARPANSA state categorically that their advice is not medical advice and that a medical doctor should be consulted.

ARPANSA acknowledge risk. ARPANSA recommend exposure be minimised for children. Members of the public have followed ARPANSA's recommendations and advice and obtained letters from medical doctors.

Industry ignore letters produced by the general public from medical doctors and ACMA support that position by way ACMA's findings through 'audits, assessments and investigations'.

Q1: Please explain how it is legal for a wireless carrier and a communications regulator to rely solely on provisions in the Industry Deployment Code and ignore statements from medical doctors warning of or documenting harm?

We note ACMA's role to ensure compliance with the Deployment Code (industry self-regulation, is addressed under *Precautionary Approach*, below). We further note ACMA's assertion that the '*code ensures communities and councils are consulted*'.

Q2: Is this misleading and deceptive conduct, when there is no apparent legal obligation on the carrier to actually consider or act on the consultations, and no enforcement by ACMA for a Carrier to act? That is, a crafted perception of regulation.

Q3: If it is not in ACMA's remit to stop construction then who has the authority to do so?

Health and Safety of Mobile Technology

You advise that health and safety are *not relevant* to the assessment of complaints under the Industry Deployment Code, yet 'safety' appears numerous times throughout the code and is a key issue in the consideration of a precautionary approach.

We note that Section 8.1.1(b) of the Industry Code allows carriers to refer members of the public to the relevant industry body or Government agency. Seemingly, this is a mechanism by which to deflect responsibility for health and safety risk away from the Carrier by leveraging constructs of Government authority.

Carriers rely on ARPANSA, ICNIRP, WHO and more recently Australia's CMO, and this is acceptable to ACMA as evidenced in numerous complaint investigations (c.f. Mullumbimby).

In recent correspondence between ECSFR and the ACNC Commissioner, the Commissioner stated: *"My assessment of the available scientific evidence is based on the findings in the ICNIRP Guidelines. Therefore, I do not consider I need to address the Applicant's views about the scientific integrity of ARPANSA."* [1]

It is well known that the 'safety levels' in ARPANSA RP3 is a copy of the ICNIRP levels.

As stated earlier ARPANSA is not able to give medical advice, but neither is ICNIRP. ACMA will have noted from written submissions to the 5G Parliamentary inquiry (and the many references presented in Appendix A of our letter to ACMA of 9 July 2020) that ICNIRP has many documented conflicts of interest with Industry. So much so that the Italian Court of Turin has determined the advice of ICNIRP to be unreliable evidence.

8.1.1(b) refers only to '*industry body or Government agency*'.

Q4: As ICNIRP is not a government agency, can you please confirm it is an industry body for the purposes of 8.1.1(b)?

Q5: Please explain what jurisdiction ICNIRP has over Australia as an industry body or indeed at all, being a German registered organisation?

Q6: Does ACMA consider it reasonable for ACMA to ignore the body of evidence pointing to ICNIRP's conflicts which is suggestive that industry fund the research, industry set the standards, industry self-regulate, and industry manage risk through regulatory capture?

Q7: Will ACMA continue to permit industry to rely on ICNIRP as a 'health authority'? If so, on what legal basis?

Q8: By allowing industry to rely on ICNIRP and ARPANSA for medical advice, is ACMA abrogating its responsibility in the conduct of investigations?

Certainly WHO and the Department of Health (CMO) have authority to supply medical advice. The WHO, IARC have admitted risk and hazard insofar as the 2011 class 2B carcinogenic

[1] S105-5 of the ACNC Act, makes it clear that the ACNC does not have a legal identity separate from the Commonwealth

classification is concerned. There is presently a debate around upgrading that classification to a *probable* or *definite* carcinogen based on recent non-industry funded research out of the US (NTP) and elsewhere.

The 2011 WHO IARC classification would seem to be at odds with the position of Federal Department of Health and Australia's former CMO (now Secretary of Health). Yet, ACMA and Carriers rely on the unqualified advice of the former CMO that '*5G is safe*' and '*not hazardous'*. ECSFR have written to Dr Murphy (separately and on several occasions) seeking proof to substantiate his statements and to date, we have obtained no response.

As this issue is material to S8.1.1(b) of the Industry Deployment Code, ECSFR's associates have established (under Freedom of Information) that the statement by the CMO was indeed an official statement by the Department of Health, Office of the CMO and not a personal opinion.

On 15 November the CEO of ATMA writes to Dr Murphy (then CMO), pointing out that ARPANSA and ACMA have been cooperating with ATMA (Wireless Industry) in Parliament and that '*ATMA see a role for the Health Department to engage in this conversation*.' **Dr Murphy is '*happy to help*' and instructs his staff to: '*get back to ATMA and outline a strategy'*** and so on.

ECSFR's letter to Dr Murphy quoted WHO and ARPANSA and established (with evidence) that there is: a risk of harm, acknowledged health effects from 5G, inadequate research on 5G, inability to measure 5G exposures, a lack of understanding on exposure to 5G, a failure in risk communication, and a WHO, IARC potential carcinogen classification. ECSFR asserted that altogether these factors do NOT equal safe. We have made three attempts to seek clarity on Dr Murphy's official CMO statement on 5G. Two letters have been in the public domain and acknowledged with read receipts by Dr Murphy, and one was private as it was settled by legal counsel, sent certified mail, but curiously redirected to the Fyshwick post office.

On the basis of the absence of evidence, and the documents obtained under FOI, it appears that **the guidance for the Department's Health Policy Statement on 5G, was not based on medical evidence, but rather industry strategy** and that the statement is **misleading to the public and public officials**.

Our members are becoming increasingly confused by who's interests federal regulators are acting in. Decent Australian's maintain the view that to harm children or to put children at risk because it is profitable, or inconvenient or expensive to do otherwise, is not what was intended by the Constitution of Australia, which requires federal public servants to act in the public interest.

We conclude that ACMA's reliance on industry's reliance on Section 8.1.1(b) of the Industry developed Deployment Code is at best, a fallacious appeal to Authority and has no credibility given ARPANSA's disclaimer, conflicts of interest in ICNIRP, and Federal Health policy seemingly directed by industry and not medical evidence, and in conflict with WHO, IARC. It is also to be noted that in 2020, a number of Sovereign States have publicly questioned the independence of the WHO.

Q9: Given the above, on what legal basis does ACMA take the position that health and safety of people (children, workers, the general public) are not relevant to assessment of complaints under the Industry Deployment Code?

Q10: On the basis of evidence presented (and to the Parliamentary Inquiry into 5G) does ACMA consider the health advice emanating from ICNIRP, ARPANSA, ACEBR, WHO and the CMO to be without bias?

Precautionary Approach

We agree the Industry Deployment Code does indeed mention precaution. However, it is clear that the Industry Code (which ACMA endorse), places industry profit before risk to health and that the onus is solely on the industry to make that decision.

Our assertion is evidenced by Clause 4.2.3 of the Code, the objective of which is: "*With the objective of minimising unnecessary or incidental RF emissions and exposure…"*; with the industry escape clause being: *"…have regard to: (f) whether the costs of achieving this objective are reasonable."* It is abundantly clear that **industry solely determine the reasonableness of the costs of protecting the health of people and the environment. Yet, it is the State Governments who bear any health care burden**. We note the wireless industry has not been given regulatory powers over health by the Constitution of Australia.

Industry of course defer to ARPANSA (who are not qualified to provide medical health advice) until recently, when the Department of Health, after being approached by the CEO of ATMA (Industry), took on the role of providing medical safety advice on RF.

ACMA's allowing the wireless industry to self-regulate may, in time, be proven to cost the Australian Economy 100s of Billions more than it profits from spectrum licenses. Case in point being the risk aversion of the insurance industry toward insuring for harm from wireless technology, and the Government's projections on blood cancers alone costing the economy up to 500Billion over the next 15 years.

Q11: Does ACMA agree there is too much at stake to continue to deflect risk management of health?

ECSFR's submission to the Parliamentary Inquiry into 5G called for a comprehensive risk assessment of all identified risks associated with 5G. To not do so will be extremely reckless with the Nation (health, greenhouse gas emissions, national security, and so on). One can't truly apply precaution without fully assessing and understanding the risk and mitigating strategies. The only risk that seems to have been assessed to date is risk to revenue.

Q12: Will ACMA be commissioning an independent risk assessment of 5G?

ACMA Conflicted?

States and Territories of Australia have removed the licensing and regulation of gambling away from State Treasury Departments as it was determined one cannot regulate and collect revenue from that which you regulate and not be conflicted – a precedent has been established.

Q13: Please supply the last audit performed on ACMA by the Australian National Audit Office.

Q14: Why have ACMA not referred the 100s of submissions to the Parliamentary Inquiry into 5G, expressing concern about health risks and harm from RF, to the Federal or States' Departments of Health for medical investigation?

We thank you for considering this matter of public interest and anticipate your response within 30 days.

Yours sincerely,

S.J.Toneguzzo

(B.E.Eng., Grad.Dip.Comp.Sc., M.Eng.Sc., CPEng., Fellow IEAUST., NER, APEC, IntPE(Aus)).

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08.09.2020

C.C.

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