Australian Government | acma

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13 October 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: Second open letter to the ACMA**

I refer to your email of 8 September 2020 in which you attached a second open letter to the Australian Communications and Media Authority (**ACMA**) seeking a response to 14 questions.

I do not propose to address all of the questions you pose. Some of the questions are not within the ACMA's remit to resolve and should be directed to either the:

- Australian Radiation Protection and Nuclear Safety Agency (**ARPANSA**) or the Department of Health for health related or medical matters, or
- Department of Infrastructure, Transport, Regional Development and Communications for policy related matters.

The ACMA does not provide legal advice, you should seek your own legal advice in respect of your questions about the legal basis of the regulatory arrangements.

This letter addresses those matters that fall within the ACMA's remit. A number of the issues you again raise were addressed in my letter of 12 August 2020. By not addressing all of the comments and assertions you have made in your letter the ACMA is not to be taken as agreeing with them.

*The regulatory framework and the ACMA's role*

In relation to your Question 1, we note that the context in which your questions have been raised relates to obligations on carriers imposed by the C564:2018 Mobile Phone Base Station Deployment Code (the **Deployment Code**). Many of the issues you have raised do not arise under the Deployment Code. Importantly, the Deployment Code does not, through the references to a precautionary principle or otherwise, impose or alter the electromagnetic energy (**EME**) limits which carriers are obliged to follow in the installation and operation of mobile facilities.

You are welcome to seek your own legal advice on the scope of the Deployment Code obligations. Suffice to say, the ACMA does not agree that those obligations extend into all of the matters you raise.

Relevant technical and health-related science is considered (and not ignored) by ARPANSA in the setting of EME limits applicable in Australia, to which the ACMA gives legal force through the setting of standards. Any questions you have in relation to that science should be directed to ARPANSA.

It is not correct to assert as you do in Question 2 of your letter that "there is no apparent legal obligation on the carrier to actually consider or act on the consultations, and no enforcement by the ACMA for a carrier to act". Mobile carriers have obligations under the Deployment code to have regard to community feedback in constructing mobile phone base station infrastructure. The enforcement remedies available to the ACMA are set out in my 12 August 2020 letter.

There are multiple planning pathways carriers may take to deploy infrastructure. For example, a carrier may:

- obtain planning approval from the relevant local government authority
- deploy infrastructure in accordance with any applicable state or territory planning laws, or
- rely on Commonwealth land access powers set out under the Schedule 3 to the *Telecommunications Act 1997* (the **Act**).

The planning pathway will depend on a variety of factors such as the type of infrastructure proposed and the classification of the land on which the infrastructure will be installed.

The ACMA can and does take enforcement action against carriers who do not comply with their obligations. The ACMA has no compliance role in relation to the deployment of facilities under a law of a local, state or territory government.

*Health and Safety of Mobile Technology*

The ACMA rejects any suggestion that it is abrogating its responsibility in the conduct of investigations. The ACMA undertakes careful analysis of carrier compliance with their regulatory obligations and its investigations address all relevant matters.

The effect of clause 8.1.1(a) and (b) of the Deployment Code is to ensure carriers provide, on request, information on how they address EME health and safety issues and where reports on these issues may be obtained. We have no evidence to date to suggest carriers are failing to fulfil these obligations. The questions you raise are not relevant to the Deployment Code obligations.

Submissions made to the House of Representatives Standing Committee on Communications and the Arts Inquiry into 5G in Australia are for the consideration of the Committee undertaking that Inquiry. The Government is currently considering its response to the inquiry.

To the extent that your questions relating to the International Commission on Non-Ionizing Radiation Protection relate to the setting of Australia's EME limits, those processes, built on the scientific analysis undertaken by ARPANSA, are transparent and explained on the ARPANSA website.

*Precautionary approach*

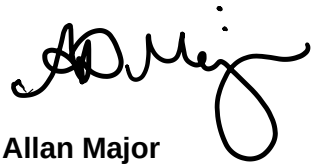
In my letter of 12 August 2020, I outlined the manner in which the precautionary principle is applied in the Deployment Code. There is little to add other than to note that we do not agree with many of the statements you make under this heading.

*ACMA Conflicted?*

As noted in my previous correspondence, 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.

A list of audits conducted by the Australian National Audit Office into the ACMA is available on its publication website (www.anao.gov.au/pubs).

Yours sincerely



**Allan Major**
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