To Whom It May Concern,

RE: REVIEW OF THE MOBILE PHONE BASE STATION DEPLOYMENT INDUSTRY CODE C564:20111

It is understood that the industry recognized Standard is titled **INDUSTRY CODE C564:2011 MOBILE PHONE BASE STATION DEPLOYMENT** (the Code) and it states a Carrier's mandatory obligations when rolling out base stations. The Code's recognition as being the standard for this activity makes its mandatory provisions part of the Legislative framework as per *clause 123* of the *Telecommunications Act 1997 (the Act).*

The current version of the Code states *"INTRODUCTORY STATEMENT , **provide greater transparency** to local community and councils when a Carrier is planning, selecting sites for, installing and operating Mobile Phone Radiocommunications Infrastructure. Although the Code cannot change the regulatory and legislative regime at local, State or Federal level, it can supplement the existing requirements already imposed on Carriers by requiring them to consult with the local community and to adopt **a precautionary approach** in planning, installing and operating Mobile Phone Radiocommunications Infrastructure."*

It is understood/interpreted that the current Code review aims to raise the bar to demonstrate an improved approach between Carriers and all affected parties including Council. These statements read very well but are not exactly practiced by the Carriers in real time scenarios. The Consultation I have recently experienced did not represent the very meaning of the words *to consult*.

It is also understood that the aim of a consultation process is to provide the Council and public with unequivocal up-to-date information/evidence that a duty of care has been fulfilled with regard to Code compliance within the industries various roles and responsibilities. Cheques and balances within a system ensure compliance. The current self-regulatory system has none and this is a reflection of the failings and deficiencies evident with respect to Code compliance and the consultation process as a whole.

A further detailed explanation of my consultation experience for proposal site **150 Esplanade, Brighton, Victoria, 3186, Site No: 3186012** can be found at the below. This Consultation lasted for the duration of 10 months, 20 days (324 days). **I encourage the Communications Alliance to Audit this current Consultation process for, 150 Esplanade, Brighton, Victoria 3186.**

I believe that the current Code is deficient as defined by *clause 125, subsection (7)* of *the Act.* (This is an issue I am about to address with the ACMA).

125 ACMA may determine industry standards where industry codes fail

> *Subsection (7)*
>
> *(a) the code is not operating **to provide appropriate community safeguards** in relation to that matter or those matters; or*
>
> *(b) the code **is not otherwise operating to regulate adequately participants** in that section of the industry in relation to that matter or those matters.*

Given the above it would not be considered unreasonable for the Code review to consider the following,

1. In the interest of transparency the Term "Low-impact facility" needs to be clearly fully defined in plain English, as the industry views the application of the term i.e.
    a. The industry term Low impact facility does not relate to the visual size or appearance. This is not aligned with the suggested description within the ACMA's documentation fact sheets.

b. A Low impact facility includes any building works and/or components the Carrier deems *"necessary" or "desirable"* to the facility, this includes and not limited to, new civil extensions attached to an existing building, building external wall extension, additional ladders, walkways and hand railing. This is not aligned with the suggested description within the ACMA's documentation.

2. In the interest of transparency the Term *"Installation"* needs to be clearly fully defined in plain English, as the industry views the application of the term i.e.

a. The industry term is not solely restricted to the actual *activity* only but more the installation of any building works and/or including installing any components the Carrier deems *"necessary" or "desirable"* to the facility.

3. A mandatory obligation for a pre-proposal independent check to be performed for *Clauses 1.4 Relationship to Other Laws, 4.1 Site Selection & 4.2 Mobile Phone Radiocommunications Infrastructure Design*.

The independent audit performed to ensure the basis of design has been fully identified and the scope of work and final design established i.e. full legislation compliance to be achieved prior to Commencement of a consultation and ensuring the Consultation Plan is *"fit for purpose"* as per *clause 6.3.2.*

4. Addition to *subclause 6.4.1,* mandatory obligation required for the **Consultation Plan** to be fully publicly accessible at all times to ensure transparency and Code compliance with *clause 6.3.2, 6.3.1(b) & 6.6.4* and in accordance with the Carriers written procedures.

Despite repeated attempts the Carriers did not produce an up-to-date Consultation Plan throughout the process, of note the Consultation Plan is described as a "public accessible document" within the Carriers written procedures.

5. Amendment to *subclause 4.1.2,* remove the words *"on request".*

Also an addition to *subclause 6.4.1,* in the interest of transparency the Carriers written procedures must be fully publicly accessible (make a mandatory obligation) at all times to ensure Code compliance with *clause 6.3.1(b)*.

6. *Clause 1.2 Objectives* of the Code, all subclauses to be made mandatory obligations.

Similarly any use of the word *Objective* throughout the Code should be a made mandatory obligation.

7. More emphasis identified for *clause 6.3.3 & D.2.1 Stakeholder Analysis* and made a mandatory obligation.

For a smoother and fairer consultation for all, a public information session should be held at the subject site prior to a consultation period commencement and offered to all affected parties within the 500m radiation zone, as per *clause D.2.3 Consultation Tools.*

8. Amendment to *subclause 3.1.2 (c) & 6.4.2* and identified as a mandatory obligation.

A base station design should be finalized and full set of **Final Construction** drawings be available for all affected parties (not just Council) to comment on, as per a regular planning application to Council.

9. Amendment to *subclause 6.5.1, FIGURE 1(b),* Add the closing time of **5pm** to *"Close of period for Interested and Affected Parties and Council to comment on consultation plan"* and as per *FIGURE 1(a).*

In my experience the Carriers stated a 5pm deadline within the notification document and then extended the period after the time limit had elapsed without given the public prior notice. The Carrier stated that provisions of the Code do not dictate an actual closing time, when *FIGURE 1(a)* clearly does. The administrative technicality needs to be clearly represented within the provision.

10. Addition to *clause 6.6,* a mandatory obligation is required in the form of a Carrier response time limit for written responses as in accordance with Carriers written procedures and *subclause 6.6.4(c).*

The Carrier did not demonstrate compliance with *clause 6.6.2* an therefore Carriers written procedures a breach of *subclause 4.2.4.*

11. Amendment to *subclause6.6.4(e),* omit the provisions of the "*NOTE".* The Carrier did not attempt to answer written complaints made stating breaches of mandatory obligations and then quoted *""The consultation may not always: ii)* ***resolve all differences of opinion or values****."*

Of note, I consider my complaints did not offer opinions and the Carrier did not provide opposing facts or evidence proving their obligatory compliance.

12. A requirement of the introduction of new mandatory obligations to demonstrate the very meaning of the word ***Consultation****.*

Consultation meaning - *to consult*, *to be able to request information and hold conversations in order to make a decision* i.e. *to talk, especially an informal one, between two or more people, in which news and ideas are exchanged.*

Either that or the Industry needs to consider renaming the process more appropriately to represent the current system/process as it is currently performed.

13. Addition to *clause 4.2 & clause 8,* a mandatory requirement is required to demonstrate the *"APPLICATION OF PRECAUTIONARY APPROACH"* and tangible evidence provided in the form of a site risk assessment. The document must identify hazards and considerations made for applying needed actions to minimize unsafe working sites and base station design.

14. Extra duration to be given to anyone who has identified themselves as an affected party to allow potential further questioning and debate. The current process appears to attempt to shut down the conversations and not allow a debate. Without debate the affected parties have little chance of conducting their own investigations to establish the true facts of their findings. The current industry ideology does not respect true facts that are proven through objector's findings.

15. Addition to the Code *Section 11*, a mandatory obligation for Carrier Complaint responses and should be clearly articulated to provide incontestable answers for all reasonable fact-based written submissions.

16. Amendment to *subclause 11.1.2(a)* Addition of the words "*notwithstanding any information regarded as prudent to suppling evidence of Code compliance would not constitute as request for information".* Despite producing facts that proved this proposal was non-compliant with Code the Carriers withheld information quoting, requests form information are not considered a complaint.

17. *Subclause 11.2.1 "A Carrier must have a written procedure for dealing with complaints",* needs to be a mandatory obligation and added to the Code *Section 6.4* and made publicly available.

18. Amendment to *subclause11.3.6,* a mandatory obligation added for the Carriers written 'record of complaints'. This document needs to be a publicly available document at all times to ensure compliance with *clause 6.3.2, 6.3.1(b) & 6.6.4.*

19. Addition to the Code *Section 11*, a mandatory obligation added that specifies the Carrier needs to produce their findings of all matters to demonstrate full compliance with all Code mandatory obligations and Carriers written procedures.

20. Addition to the Code *Section 6.4*, a mandatory obligation stating that the consultation notification needs to clearly identify which sections of the Code apply to the specifics of the Carriers proposal pursuant to *clause 6.3.1(b).*

21. Amendment to *subclause6.3.1(c),* with regard to this being a mandatory provision it is not clearly defined what would satisfy what constitutes as *"using its **reasonable endeavours** to identify **community sensitive** locations".*

    Surfing the internet and looking at Google maps (or equivalent) would not meet any reasonable expectations to be quantified as a real investigation to reveal a potential *'sensitive area'* and as in accordance with *subclause 6.3.1(d).* Using *clause D.2.3 Consultation Tools, "conduct door knock", "facilitate public meeting", "conduct open house/community information sessions", "consult with community representatives"*, would be considered more appropriate measures.

Conclusion

Any Code clause that the Carriers are not mandatorily obliged to comply with are to be omitted, for from the Code for clarity. Or what should occur is for all mandatory obligations to be rebranded as the **industry standard**, as per *subsection 125(3)* of *the Act*.

*The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an **industry standard**.*

The Carriers behaviour throughout consultation could be described as blatantly disregard for the Code and considered abusing their privilege. On numerous occasions the Carrier withheld information on the grounds of it was not within the provisions of the Code to supply the info. This work ethic and culture does not demonstrate industry transparency or *"**maximising the level of accurate and accessible information** about the project to Interested and Affected Parties"*.

Therefore the current Code ***"is not otherwise operating to regulate adequately participants",*** or *"**operating to provide appropriate community safeguards"***. There needs to be Checks and balances added to the system and stern penalties introduced with a reported accumulation effect with stronger penalties for repeat offenders. The current system appears to use an uneducated non industry trained public as the only source of an audit of the consultation process. This would not constitute as comprehensive regulation check or represent an appropriate public safeguard.

In my experience the Carriers have struggled to perform the absolute minimum requirement of the Code and demonstrate any evidence of compliance.

The current Code DOES NOT operate or demonstrate the Codes statement of intent, of to;

- *allow the community and councils to have greater participation in decisions made by Carriers when deploying mobile phone base stations; and*

- *provide greater transparency to local community and councils when a Carrier is planning, selecting sites for, installing and operating Mobile Phone Radiocommunications Infrastructure*

this is further explained below.

Additional failings within the Consultation process

EME reporting - Adding new base station sites to the existing environment adds to the Existing background EME radiation smog and needs to be recorded and documented.

It is recognized that with the lack of scientific evidence the industry does not full understand the long term effects of the radiation technology being transmitted as per *subclause 10.3.2*. With no community safeguards in place this does not demonstrate *'the precautionary principle'* being applied. The unproven science has lead the industry to make no safety guarantees with regard to publics wellbeing. Of note these claims are similar to claims made by the asbestos and tobacco industries.

EME accountability - The ARPANSA EME report needs to be independently checked if challenged. It is believed that the EME report supplied with the proposal of 150 Esplanade is inaccurate. Of note the report is only as accurate as the information supplied by the carrier. In this instance the information within the proposal was incorrect and the Carrier chose to ignore the submission detailing my findings.

Documented evidence from the Consultation for 150 ESPLANADE, BRIGHTON, VIC 3186. Site No: 3186012

This Consultation lasted for the duration of 10 months, 20 days (324 days). The Carriers have not given any reasonable response to the cause of the length of the consultation despite repeated requests.

I believe the lack of due diligence in the early stages of planning left the Carriers under-prepared upon the commencement of this Consultation. Consequently this extended the duration of the Carriers Consultation process to 302 days over their original estimate.

This Base Station proposal first opened for comment on the 3rd May 2016 and the Final Report was issued on 22nd March 2017 (signalling the end of consultation).

Overall the lack of demonstrating compliance and underperformance of the Carriers to answer the basic questions signals a failing process, for example "please provide evidence of the merits of why the subject site chosen?". Their inability to provide information from the start proved no duty of care was present throughout. The Carrier had to provide further information after the consultation had elapsed to be able to claim the minimum mandatory obligation fulfilled and compliance achieved. The Carrier named this document *"additional information"* and inaccurately referred to it as such in their final report.

The Carrier had already decided they wanted to construct a new base station without identifying a Low signal or providing any definitive evidence for the subject site selection.

With clear non-compliance issues it is understood that the ACMA have no power to rectify potentially unlawful practices.

In simple terms there was a shortfall in providing the undoubtable clarification to demonstrate "the need" for the base station, the signal coverage objective, and any true merits for the subject site to be chosen and real documented evidence for Co-location consideration given.

The main issue of concern was that the level of current information provided by the Carriers was not aligned with expectation levels. Therefore the Carriers responses to the specifics of objections raised do not provide the reasonable clarification required for a decision-maker to be “satisfied”.

The industry has a duty to accord a person procedural fairness when making a decision affecting an individual's rights, interests or legitimate expectations.

It would therefore not be unreasonable for the Carriers to be required to supply sufficient logical probative evidence to aid affected parties in understanding any potential conflicting compliance issues raised by an objector. This would demonstrate "natural justice" had occurred, something that is missing from the current process.

Despite my best efforts to provide considered adequate facts for consideration to be given to any expression of dissatisfaction or grievance made in writing, the Carriers chose to respond with regarded factless based opinion and misdirection to the point of claiming a Carrier is not obliged to respond to all written submissions of alleged breaches of the Code. The Carriers didn't supply the required valid reasons for this decision made. The Carriers’ decision of potentially knowingly providing the public with false information with the intention to deceive the public is not acceptable, but with no regulation in place or avenue of appeal for affected parties is the proof of the failings within the current process.

Within the ideology of Modernism there is the idea that there is a truth and we can discover and establish the truth through debate and analysis. The Carriers have rejected any such ideas presented and in turn refer to subjectivity and opinion only. What the Carriers are seemingly implying is the public has their facts and the industry has its own facts, without the willingness to discuss the validity of points raised. True facts are generally the best vindication against opposition views and opinions.

Of note the Carriers have not provided the realistic and/or tangible evidence used to form any of their opinions stated in responses.

There was significant behavioural patterns that clearly demonstrated the Carriers had not performed their due diligence or duty of care. The Carriers would not provide additional information required as proof of Carrier Code related compliance issues, on the grounds of the Code clause 11.1.2 *"a complaint does not include: (a) a request for information;"*

This current Consultation process for, 150 Esplanade, Brighton, Victoria 3186 **lasted for 324 days.**

This is further proof of failings of the process, as not providing the incontestable information when there is evidence of an alleged Code breach is considered a further breach of the Code *clause 6.1.4(b)*.

In my opinion the Carriers under- prepared and underperformed consultation demonstrated a complete disregard to compliance relating to mandatory obligations of the Code and their written procedures. It is recognized any current ambiguous and vague clauses leave the Code open to interpretation when applied to any specifics of a proposal. The industry representative didn't seem to agree with Code *clause* specifics and therefore claimed code provisions doesn’t require a Carrier to provide certain information. The codes clauses need to define clearly the intent or current recognized interpretation to avoid any potential misrepresentation to the public. I believe the Carriers admitted in writing that there is a disconnect between valid community complaints received and the Industries interpretation of the Code meaning and understanding.

This would clearly indicate the many current shortfalls apparent and would require the Code format to be presented in a far better manner than the current format to represent a greater balance of fairness for all.

I may provide this information to the ACMA and any responses received or lack of response of the many issues raised within this Code review submission letter.

I look forward to receiving your feedback and consideration and hope you agree these issues merit an appropriate response.

Regards,

Scott Chapman