

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

***THE PROTECTION OF AMENITY RIGHTS (SUCH AS  
SUNLIGHT AND VIEWS) OF RESIDENTS FROM THE  
IMPACT OF SATELLITE DISHES AND CABLES WHICH  
ARE ASSOCIATED WITH PAY TELEVISION***

REPORT NO.34

OF THE

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

OCTOBER 1997



## *STANDING COMMITTEE ON PLANNING AND ENVIRONMENT*

### **Resolution of appointment of the Standing Committee on Planning and Environment:**

[that] a Standing Committee on Planning and Environment [be established] to examine matters related to planning, land management, transport, commercial development, industrial and residential development, infrastructure and capital works, science and technology, the environment, conservation, heritage, energy and resources...

[And that the committee] inquire into and report on matters referred to [it] by the Assembly or matters that are considered by the committee to be of concern to the community.

[Further, that] if the Assembly is not sitting when the Standing Committee on Planning and Environment has completed consideration of a report on draft Plan variations referred pursuant to Section 25 of the *Land (Planning and Environment) Act 1991* or draft Plans of Management referred pursuant to Section 203 of the *Land (Planning and Environment) Act 1991*, the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation.

*Minutes of Proceedings* (Third Assembly) No.1 Thursday 9  
March 1995, amended 22 June 1995

### ***Committee Membership***

Mr Michael Moore MLA (Chair)

Ms Roberta McRae, OAM MLA (Deputy Chair)

Ms Lucy Horodny MLA

Mrs Louise Littlewood MLA

Secretary: Mr Rod Power



***Terms of reference for the inquiry:***

That the protection of amenity rights (such as sunlight and views) of residents from the impact of satellite dishes and cables which are associated with pay television be referred to the Standing Committee on Planning and Environment for inquiry and report by the last sitting day of 1996, with particular reference to:

(1) the adequacy of the existing amenity controls in ACT planning and building legislation which relate to the residents' access to views and sunlight, including consideration of:

(a) the residents' right to a view across a neighbour's property;

(b) the potential for more prescriptive controls;

(c) the feasibility of the implementation of such controls; and

(d) the potential of such controls to limit individual rights to develop property;

(2) the potential impact on the streetscape and residents' views of satellite dishes and cabling associated with pay television, including consideration of:

(a) the extent of the impact in the ACT; and

(b) controls being applied in other Australian States;

(3) recommendations for the development of related control parameters and associated assessment criteria.

If the Assembly is not sitting when the Committee has completed its inquiry, the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

*Minutes of Proceedings* (Third Assembly) 23 May 1996

That the resolution agreed to by the Assembly on 23 May 1996, referring the issue of the protection of amenity rights to the Standing Committee on Planning and Environment for inquiry and report, be amended by omitting "by the last sitting day of 1996".

*Minutes of Proceedings* (Third Assembly) 21 November 1996



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## LIST OF RECOMMENDATIONS

The Standing Committee on Planning and Environment recommends that:

*(1) the Government review the existing policies that are intended to ensure residents can access sunlight to their main private open space and to the northern facade of their residences, in order to achieve the optimal balance between facilitating a resident's solar access while respecting the 'rights' of neighbours and the community [para 8.10].*

*(2) the Government ensure applications for approval of structures such as television antennae and satellite dishes are made only when required. The committee understands this requires clarification of the Design and Siting provisions of the Territory Plan and the Buildings (Design and Siting) Regulations [para 8.14].*

*(3) the Government stipulate that, where existing electricity cabling is undergrounded, the new telecommunications cable also be placed underground [para 8.18].*

*(4) the Government permit the installation of overhead bundled cable to carry telecommunications technology only if, at the same time, the existing overhead electricity wires are bundled into one cable [para 8.22].*

*(5) the Government take steps to encourage Telstra to incorporate its phone wire into the same aerial bundled cable that carries telecommunications technology [para 8.24].*

*(6) the Government take all possible steps to ensure that ACTEW's existing infrastructure is used wherever possible to provide the new telecommunication technology, and support ACTEW's role as 'a neutral player' that opens up its network to the widest possible array of service providers [para 8.26].*

*(7) the Government do all that it can to persuade the Commonwealth Government that the appropriate place for competition is at the service provider level rather than at the infrastructure level [para 8.27].*

*(8) the Government encourage ACTEW to facilitate the entry of Canberra- based businesses to the new telecommunication technology [para 8.29].*

*(9) the Government review the existing provisions relating to privacy in multi-unit developments with the aim of maximising the amount of private space and the maximum possible use of plantings to improve privacy and amenity [para 8.31].*

*(10) the A.C.T. Government urge the Commonwealth Government to facilitate undergrounding of telecommunications infrastructure (going into domestic residences) by the use of appropriate incentives [para 8.36].*



## **1. INTRODUCTION**

1.1. The Standing Committee on Planning and Environment is pleased to present its report into the protection of amenity rights (such as sunlight and views) of residents from the impact of satellite dishes and cables which are associated with pay television.

1.2. The report contains eight chapters. The first chapter sets out the background to the inquiry including the manner in which it was conducted and the number of submissions received by the committee. Chapters 2-7 contain summaries of the evidence taken by the committee (both written and oral). The final chapter sets out the committee's conclusions.

### ***Conduct of the inquiry***

1.3. On 23 May 1996 the Legislative Assembly formally directed the committee to inquiry and report on the matters outlined in the specific Terms of Reference listed earlier in this report. The Assembly took this action on the motion of the Attorney-General and Minister for the Environment, Land and Planning who stated:

Since becoming Minister for this area, I have had a number of representations from residents of the A.C.T. concerned about the issue of amenity of their view. This has had a number of forms - people concerned about houses or extensions to houses being built next to them which have given rise to the blockage of a view to some attractive part of the Territory, the impact of the satellite dishes and cables that are now proliferating as a result of pay TV expanding in the community, and other issues that have generally been given more prominence because of the incidence of higher-density housing in the A.C.T.

It seems to me that these issues raise a fairly important philosophical question about how we provide for protection of that kind of amenity within the framework of our planning legislation... [and that is] opportune for the committee to have that as a formal reference.

1.4. The committee agrees with the Attorney-General that the issue of amenity warrants detailed consideration.

1.5. On 21 November 1996 the Assembly agreed to delete the reporting date of 'the last sitting day of 1996'.

1.6. On 13 December 1996 the committee called and examined officials of A.C.T. Electricity and Water Corporation Ltd [ACTEW].

1.7. On 17 December 1996 the Chair and secretary inspected residential sites in Gungahlin at the request of the Master Builders' Association [MBA]. The MBA was particularly concerned with problems in relation to the side and rear setbacks of two-storey dwellings.

1.8. On 2 May 1997 the committee again called and examined officials of ACTEW, along with a member of the public (Mr Eckermann).

1.9. On 16 May 1997 the committee called and examined Government officials relation to the Government's submission received earlier that month. The officials subsequently provided certain supplementary material requested by the committee. The committee then heard another member of the public (Dr Bourke).

1.10. A list of witnesses appears at Appendix A.

### ***Submissions***

1.11. In view of the inquiry's broad terms of reference, the committee wrote to the relevant Ministers in all States and the Northern Territory to request details of their current policies. The committee also placed advertisements in the local Canberra press inviting the public to lodge written submissions.

1.12. The committee received 24 submissions from the persons and organisations listed at Appendix B.

1.13. The committee is conscious that submissions were written in 1996 and that it has taken some time for this report to be issued. In large part, this reflects the fact that the Government's formal submission to the inquiry was not received until 6 May 1997, which considerably delayed the committee's work. As well, the committee has waited to see the final shape of new Commonwealth legislation and policies, which commenced on 1 July 1997.

1.14. In this report, the committee has continued its practice of summarising submissions so as to identify key issues. Where there are a number of submissions in a chapter, the submissions have been organised in alphabetical order. The committee does not claim that the summaries are exhaustive but they do assist members - and, it is hoped, the reader of this report - to come to terms with the complex issue of amenity rights. Wherever possible, the committee has directly quoted from the submissions. If a quotation is not footnoted, it has been taken from the relevant submission; if it is footnoted, it has been taken from the *Transcript* of the public hearings.

### ***Appreciation***

1.15. The committee thanks all those who contributed to the conduct of the inquiry, especially submitters and witnesses at the public hearings.

## **2. SUMMARY OF EVIDENCE: A.C.T. GOVERNMENT**

2.1. The Government's submission stated that the key issue is how to balance the benefits of the new telecommunications technology against its potential environmental impacts.<sup>1</sup> The submission provided a great deal of background to this issue.

2.2. The Government described the existing legal situation in the following way:

Rights and obligations may arise under either common or statute law. In practice, however, the common law is applicable as a development control/amenity protection tool in very limited circumstances. In particular, rights to a view, light and solar access have... not generally been recognised by the common law, although they may be provided for by way of easements and restricted covenants.<sup>2</sup>

2.3. The Commonwealth's role in telecommunications was stated to be:

The Commonwealth's *Telecommunications Act 1991* and the Telecommunications (Exempt Activities) Regulations generally override the planning and environmental powers of State, Territory and local government jurisdictions in respect of any works carried out by the major licensed carriers (Telstra, Optus and Vodafone)... The Telecommunications Act also grants the licensed carriers rights... to erect telecommunications facilities (including towers and cables) using existing infrastructure... [Further] the licensed carriers have considered electricity poles as existing infrastructure and negotiated agreements with electricity authorities in Melbourne, Sydney and Brisbane for the stringing of cables.<sup>3</sup>

Associated with these powers and immunities, however, are a range of alternative requirements and powers to which the carriers are subject. The most significant of these are provided under the National Telecommunications Code [required to be made under the Act].<sup>4</sup>

[The Code provides] for at least some alternative form of regulation to apply to carrier developments... [However, the Code's] provisions have been criticised by many State and local government authorities, and private individuals, as providing inadequate public information, and checks and balance upon carrier activities, as well as providing carriers with an inappropriate level of power to judge the environmental significance of their proposals in the first instance...<sup>5</sup>

The Commonwealth has long stated that its intention is to remove exemptions from State and Territory laws after July 1, 1997, the stated commencement date for full deregulation [see further below].<sup>6</sup>

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<sup>1</sup> A.C.T. Government submission p18

<sup>2</sup> *ibid* p5

<sup>3</sup> *ibid* p7

<sup>4</sup> *ibid* p29

<sup>5</sup> *ibid* pp29-31

<sup>6</sup> *ibid*

Major, and potentially contentious, works such as the erection of broadband cables and mobile phone towers are... exempt from direct A.C.T. Government control. Development by other bodies or persons however, including private telecommunications facilities, such as radio towers and satellite receivers, remain subject to Territory legislation.<sup>7</sup>

2.4. The committee understands that, from 1 July 1997, the telecommunications industry is subject to a new regulatory framework which is contained in a package of eleven Commonwealth Acts. The most important of these Acts are the *Telecommunications Act 1997*; the *Trade Practices Amendment (Telecommunications) Act 1997*; the *Radiocommunications Amendment Act 1997*; and the *Australian Communications Authority Act 1997*. Further, the Telecommunications (Low-impact Facilities) Determination 1997 and the Telecommunications Code of Practice 1997 apply to telecommunications carriers from 1 July 1997.<sup>8</sup>

2.5. Under the new regime, telecommunications carriers have immunity from State planning laws only for a Low-impact Facility or where the carrier has an Installation Facility Permit (issued by the Commonwealth for a Low-impact Facility). The committee understands that 'no tower above five metres can be considered low impact and no cable above... 13 millimetres can be considered low impact'.<sup>9</sup> Carriers are required to meet general standards in all their activities, including being required to damage the land as little as possible, to use good engineering practice, and to undertake certain consultation procedures.<sup>10</sup>

2.6. A Government official told the committee that:

The original [Commonwealth] legislation [in relation to telecommunications] forgot to bypass the Commonwealth legislation setting up the planning system in this town. So, we did maintain a degree of control that no-one else in Australia had, which was very fortunate.<sup>11</sup>

2.7. The Government submission states, in relation to the National Capital Plan:

The National Capital Plan's telecommunications policy... identifies a process... [to assess] telecommunications proposals... in both designated areas and non-designated areas....

Proposals which would have a visual impact on locations such as the 'Central National Area', 'Main Avenue and Approach Routes', and 'Canberra Landscape Settings'... and 'Extensive Urban Areas' are held to be of high sensitivity and require public consultation [whereas] small confined sections of residential areas and service trade or industrial areas are described as having low sensitivity and are generally exempt from

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<sup>7</sup> ibid p25

<sup>8</sup> 'Getting the Message' - *Guidelines for the Management of Telecommunications Infrastructure* (Purdon Associates, Clayton Utz, Ratio Consultants, Campbell Planning & Design) June 1997 p15

<sup>9</sup> Mr Prattley (Executive Director, PALM) *Transcript* 16/5/97 p22

<sup>10</sup> *Getting the Message* p17

<sup>11</sup> Mr Prattley op cit p24

consultation. Rooftop antennas breaching the silhouette of buildings or monopodes over ten metres in height, are identified as medium scale development, and require consultation. Facilities of lesser scale, including rooftop antennas which do not breach the silhouette of a building (or integrate with its architectural details) do not require consultation.<sup>12</sup>

2.8. In relation to the Territory Plan, the Government's submission states:

Most land use policy areas established under the Territory Plan include provisions which either require the protection and enhancement of existing amenity or ensure that it is not to be unacceptably affected. Both solar access and views are to varying degrees captured within general requisite considerations of amenity, design, appearance, siting and access to sunlight. (The courts have clearly indicated that the significance of a view is an important consideration in the determination of the amenity of an area.) In each instance, however, both considerations must be balanced against issues of general public interest...

**No change is proposed to be made to existing detailed controls, for either solar access or view protection purposes. Additional view protection measures, in particular, would have substantial inherent conflicts with other planning objectives and be impractical to implement.**<sup>13</sup>

2.9. Further, the Plan's provisions for antennae or aerials are described thus:

Currently antennae or aerials (these terms are considered to include pay TV receivers) not exceeding five metres in height are exempt from Design and Siting approval providing location criteria are met [that is, the structures are exempt unless they are located between a front boundary and a building line or less than 1.5m from a side boundary or less than 3m from a rear boundary] **This exemption is overly generous if applied to satellite dishes or similar receivers and needs review.** The existing legislation was drafted with the intention of controlling height of single mast type structures - it was not envisaged to be applied to dish structures.<sup>14</sup>

2.10. The committee was informed that the Government proposes to permit the installation of satellite dishes up to 650 millimetres without approval; but that dishes above that size will require specific approval.

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<sup>12</sup> A.C.T. Government submission p24

<sup>13</sup> *ibid* p6 [emphasis added]

<sup>14</sup> *ibid* [emphasis added]

2.11. In relation to the delivery of pay TV, the Government submission notes that:

The delivery of pay TV is via microwave receivers, satellite dishes or broadband cables - the latter requiring direct connection to, or past, each user. Microwave receivers require direct line-of-sight to Black Mountain Tower, satellite dishes require direct line-of-sight to the relay satellite in orbit over the equator. Telecommunications cabling provides a range of services in addition to pay TV such as Internet access, interactive video, and interactive education programs. Cabling is approximately 25mm thick, black and hung below existing power lines or placed underground.<sup>15</sup>

In the A.C.T., Galaxy is the only pay TV provider and the company uses microwave and satellite technology for transmission [instead of cables]. ACTEW has had discussions with Telstra and Optus and is investigating the possibility of undertaking the roll-out of cable in its their behalf.<sup>16</sup>

Both Telstra and Optus consider that the existing A.C.T. infrastructure presents problems because of the difficulty of access [being located mostly along the read boundaries of blocks rather than the front]. Early discussions indicate that neither company would be interested in the Canberra market unless the cabling could be undertaken by a local service authority such as ACTEW...

Telstra and Optus advise that their cables are not compatible and therefore they cannot share the same cable. However, advice from ACTEW suggest that the two lines could be bundled into one. The issue that arises is what happens if more players enter the market sometime later.<sup>17</sup>

2.12. The submission considers that:

the primary impact of satellite dishes is visual and dependent upon the size, colour and position of the satellite dish... In general, domestic/residential receivers are small (most less than 0.7m) and are able to be positioned to avoid visual intrusion.<sup>18</sup>

Satellite dishes are more intrusive where they are made of light coloured reflective material, break the skyline or horizon, or are positioned on roof space visible from the public domain.<sup>19</sup>

2.13. In relation to the visual impact of mobile telephone towers, the Government submission states that:

With mobile telephone towers, direct conflict occurs between the preservation of Canberra's undeveloped hilltops, natural landscape setting and nature conservation values of Canberra Nature Park and the need for a telecommunications system which requires towers located where signals can be picked up - traditionally, on hilltops and, with the urban area, on top

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<sup>15</sup> ibid p7

<sup>16</sup> ibid p8

<sup>17</sup> ibid p37

<sup>18</sup> ibid p9

<sup>19</sup> ibid p41

of multi-storey buildings or other monopole towers. For technical reasons, cellular mobile phone antennae/transmitters are required to be mounted on the facade of the building, consequently increasing their visibility.<sup>20</sup>

2.14. In relation to the visual impact of aerial cables, the submission states:

The visual impact of aerial cables on local streetscapes... in the A.C.T.... may be... [less than in most local government areas] because 30 percent of existing infrastructure is underground and the remaining 70 percent of aerial infrastructure is mostly at the rear of blocks. In addition, Canberra has... a dominant landscaped setting which may be able to absorb much of the impact of additional infrastructure...<sup>21</sup>

ACTEW has begun to install bundled electricity aerial cable in parts of the A.C.T. where existing services require replacement or augmentation. Low Voltage Aerial Bundled Cable (ABC) is a new technology where bare overhead wires are covered with insulating material and twisted together to form a single cable. The process decreases the impact of the infrastructure by reducing the number of wires and allowing trees to blend with the cable. As with broadband cable the need for tree pruning is reduced because the cable can run within 300mm of tree branches. The cable is also more resistant to damage from high winds and animals.<sup>22</sup>

ACTEW has advised that it sees it as both commercially and environmentally sensible to coordinate the installation of ABC and telecommunication cable. In other areas ACTEW could utilise its existing staff and equipment to erect the cables using the existing ACTEW infrastructure. In addition, the provision of cabling would enable ACTEW to provide enhanced services to customers such as automatic meter reading and home energy audits thereby ensuring that it remained competitive in the NSW and Victorian energy markets.<sup>23</sup>

... all standard services in new areas in Canberra are provided underground. It needs to be recognised, however, that where existing services are underground, it is technically less expensive for carriers to provide poles and establish an aerial cable system than augment the underground system.

In established areas, there are some negative impacts of underground cable systems. Where aerial services are already in place, undergrounding represents a considerable additional cost in providing cable systems (ACTEW has suggested that undergrounding could be up to six times more expensive.) There is also substantial temporary disruption to pedestrian and vehicular networks... Issues related to restoration also need to be considered particularly in heritage areas. The most significant potential impact in established areas is potential damage to existing trees because of disturbance to their root systems...<sup>24</sup>

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<sup>20</sup> ibid p9

<sup>21</sup> ibid p9

<sup>22</sup> ibid p40

<sup>23</sup> ibid p41

<sup>24</sup> ibid p41

Throughout Canberra, ACTEW has suggested a variety of approaches to cable installation. In older suburbs (30 years or more) ACTEW could replace existing four strand electric wires with Aerial Bundled Cable and string the communication cable (s), either individually or bundled, below this. This approach is only viable in the older areas because the wires need to be replaced. In medium suburbs (between ten and 20 years old) ACTEW suggests stringing the communication cables below existing wires. These suburbs would then be progressively converted to Aerial Bundled Cable as required. In newer suburbs with new overhead infrastructure, communications cable would be strung below existing electricity wires.<sup>25</sup>

2.15. ACTEW advised that many services are possible with a broadband communications network including telephony [local, STD and ISD]; faster Internet access; home banking; home shopping; and telecommuting.<sup>26</sup> However, ACTEW's particular focus is upon 'the synergy between the broadband network and the electricity network':

ACTEW has entered into a deregulated electricity market. The majority of the Canberra community - the business community and at some time the residential community of Canberra - will become contestable customers for ACTEW. Those business customers will have choice as to who shall be their electricity supplier. This network will allow ACTEW to take that customer communication and that customer service the next step. We will be able to provide our customers with a better service and a better relationship with us as their electricity supplier.<sup>27</sup>

2.16. In relation to the cost of undergrounding cable, ACTEW considers:

that the problems associated with trenching, such as damage to trees and other infrastructure, in existing urban areas makes this potentially unacceptable environmentally. Naturally, in greenfield areas all services would be undergrounded including communication cabling.<sup>28</sup>

2.17. ACTEW considers that, as about 70 per cent of Canberra's low voltage electricity wires are overhead and are located in backyards, then 'aerial deployment of a communication network is the most environmental and economical solution'.<sup>29</sup>

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<sup>25</sup> *ibid* p46

<sup>26</sup> ACTEW submission p2

<sup>27</sup> Mr Ceccato (Senior Technical Officer, ACTEW TransAct Project Team) *Transcript* 2/5/97 p18

<sup>28</sup> ACTEW submission p3

<sup>29</sup> *ibid*

### **3. SUMMARY OF EVIDENCE: OTHER GOVERNMENTS AND TERRITORIES**

#### **3.1. The office of the Northern Territory Minister for Lands, Planning and Environment advised that:**

There are no amenity rights provisions in relation to the impact of satellite dishes and cables which are associated with pay television. In fact, the deployment of telecommunications infrastructure is an exempt land use which reflects the status given to public utilities and the like.

The Power and Water Authority (PAWA) is responsible for the power reticulation system and associated infrastructure in the Territory. Telecommunications carriers are required to negotiate an agreement with PAWA for the placement of any cables on the existing infrastructure.

#### **3.2. The Queensland Minister for Local Government and Planning (Mrs McCauley MLA) advised the committee as follows:**

The issue of amenity rights is complex and a substantial body of case law exists on the matter.

In Queensland the *Building Act 1975* contains the only legislative provisions dealing with amenity rights. Section 30BG of the Act provides that a local government may refuse a building application for Class 1 and 10 buildings where the building would have an extreme effect on the amenity of the adjoining neighbourhood. I am currently reviewing the Building Act and the need for these provisions.

Local government planning schemes may contain provisions dealing with the protection of amenity rights such as sunlight and views. For example, a planning scheme may impose restrictions on permissible land uses in an attempt to preserve views.

#### **3.3. The Tasmanian Minister for Environment and Land Management (Mr Hodgman MLA) expressed support for the committee's inquiry, because pay TV installations 'could have a significant impact on the streetscapes and amenity of local neighbourhoods if left uncontrolled'. The Minister noted that:**

Generally, satellite dishes under planning schemes have been regarded as subservient and integral to a dwelling house and therefore have been subject to the performance standards associated with that type of development.

#### **4. SUMMARY OF EVIDENCE: LOCAL GOVERNMENT**

4.1. The Australian Local Government Association, in conjunction with State/Territory Local Government Associations (including the Local Government and Shires Associations of NSW), provided a copy of its submission to AUSTEL on the Draft Telecommunications National Code and Draft Land Access Code (dated 2 August 1996).

4.2. The Association submitted that the Draft Code is ‘fundamentally flawed... [in that it] permits each carrier to continue to roll-out aerial cables and construct other telecommunications infrastructure virtually unfettered with the decision-making almost entirely at the discretion of the carriers’. Also, the Draft Code ‘effectively encourages the carriers to avoid servicing areas with existing underground electricity cabling’.

4.3. The Cooma-Monaro Shire Council expressed disappointment that rural councils do not have adequate resources to develop policies on issues such as amenity rights.

4.4. The Local Government Association of Queensland Inc. expressed concern about the exemption of carriers from local government town planning and building requirements.

4.5. The Queanbeyan City Council expressed concern about the issues surrounding amenity rights. It stated that its draft Multi-Dwelling Development Control Plan set out objectives and performance criteria that are intended to promote residential amenity.

## 5. SUMMARY OF EVIDENCE: OPTUS

### 5.1. Optus observed that the committee's inquiry:

is specifically targeted at infrastructure associated with pay television. Other cables and satellite dishes not used for the delivery of pay television do not come under the scope of this inquiry. Such a distinction on the basis of usage, rather than external physical characteristics, may be discriminatory if translated into law...

[Also] the inquiry does not address the impact of other TV receiving antennas. This appears to be an unreasonable distinction as it has the effect of focusing on the type of services that residents have access to, as opposed to the impact of infrastructure.

### 5.2. In relation to satellite dishes, Optus submitted:

Satellite dishes vary significantly in size depending on location, use, et cetera and a distinction needs to be drawn between large commercial dishes and the smaller residential dishes, usually in the range of 600-750 mm diameter (or less). It is a technical requirement that all satellite dishes have uninterrupted line of sight to the satellite and it this requirement that leads to the placement of dishes in relative exposed locations. However, the visual impact of the smaller type of dishes used for pay television can be minimised by adoption of siting and design criteria such as: finish that avoids glare; colour that is compatible with the residence or other building; does not protrude above roof ridge lines nor is silhouetted against the skyline.

**Should specific controls be adopted for satellite dishes, differentiation between small and larger dishes and imposition of specific criteria would assist local administrations by reducing the number of development applications that require processing...**<sup>30</sup>

### 5.3. Optus advised, in relation to cabling for pay television, that:

[it] has adopted a strategy designed to minimise the visual impact of overhead cables by only utilising existing poles from which cables are already attached. The colour of the cable has been changed from black to grey to make the cable less obtrusive...

[Further,] Optus supports a long-term undergrounding policy... [but] there are significant economic and environment costs associated with unilateral or piecemeal undergrounding activity.

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<sup>30</sup> Emphasis added

## **6. SUMMARY OF EVIDENCE: REPRESENTATIVE ORGANISATIONS**

6.1. The Australian Heritage Commission expressed concern about the impact of the Telecommunications National Code on:

visual heritage values such as aesthetic value and also the heritage values of cultural (such as urban conservation areas) and natural places...

[Also,] the Commission has been concerned that there have been instances where carriers have not referred activities to the Commission for comment... [or, where they have been referred] have commenced work on those activities within the 30 business day period allowed for comment, and before receiving the Commission's comments....

[The Commission] is concerned about the cumulative impacts of duplicated telecommunications infrastructure upon significant heritage landscapes, streetscapes, historic buildings and gardens. Activities such as trenching, installation of overhead cabling and installation of multiple towers and antennae have the potential to significantly adversely affect the values of heritage areas.

6.2. The Conservation Council of the South-East Region & Canberra (Inc.) submitted that:

The loss of environmental and social amenity due to inappropriate network roll-outs has caused social and legal conflict in other jurisdictions and... controls on network roll-outs [in the A.C.T.] need to be strengthened to ensure no loss of amenity for A.C.T. residents. [The] key to these controls are the rights of the public to comment on any proposed telecommunications infrastructure and the control of A.C.T. government agencies, and ultimately the A.C.T. Assembly, over the type and siting of telecommunications infrastructure on behalf of A.C.T. residents.

6.3. The Conservation Council attached a copy of its submission to Austel on the Draft National Telecommunications Code (dated August 1996). The Council submitted that the Draft Code 'is often little better than its predecessor in ensuring the rights of residents and the environment are fully considered in the roll-out of telecommunications infrastructure'.

6.4. The Council's submission to Austel noted that:

In the A.C.T. public and private companies providing necessary infrastructure such as sewerage, water, power, roads and other transport infrastructure are all subject to the Territory's normal planning and environmental protection legislation. What the exemption from planning and environmental controls for telecommunication carriers does is allow for private companies to put competition and corporate profits before community amenity, social, heritage and environmental benefits.

6.5. The Council expressed specific concern about the lack of local control on where telecommunications towers are sited; the inability of local governments to control the placement of overhead cables; the lack of regard to environmental

concerns in where underground cabling is sited; the inadequate nature of the community consultation process; and the absence of any provision for third party appeal rights.

6.6. The Law Society of the A.C.T. submitted that:

The assumption behind the inquiry seems to be that there are amenity rights relating to at least sunlight and views. There are no common law rights to sunlight and views. The Territory Plan does not appear to create any such rights that residents of the Territory can enforce.

6.7. The Law Society went on to observe that, though there are no common law rights, there are statutory controls. It described these controls in the following way:

Satellite dishes are structures *prima facie* requiring design and siting approval in accordance with the *Buildings (Design and Siting) Act 1964*. Section 3 of the Act defines “structure” to include “a fence, antenna, aerial...”. A satellite dish is a type of antenna or aerial and would come within this definition. A cable appears to be a structure also requiring design and siting approval.

However, Section 8(1)(b) of the Buildings (Design and Siting) Regulations omits “a prescribed building within the meaning of Section 6AA of the Building Act 1992” from having to comply unless the building is to be built between a front boundary and a building line, less than 1.5 metres from a side boundary or less than three metres from a rear boundary. Section 3(1)(b) of the Building Regulations states that an antenna or aerial not exceeding five metres in height is a prescribed building for the purposes of Section 6AA of the Building Act 1972. Section 6AA of that Act exempts a prescribed building from having to comply with the relevant operative part of that Act.

In summary, cables require approval, but satellite dishes within the normal building area do not at present require approval. It seems, however, that approvals for satellite dishes are being sought by residents and granted by the A.C.T. Planning Authority. Perhaps that is because Appendix III.I, D6.2 (page 21) and Appendix III.2 D6.2 (page 23) of the Territory plan seems to envisage approval for “television antennae”. **There may be some merit in “cleaning up” the legislative complexity, so that applications for approval are only made when required.**

**Unless there is a view that such structures require special statutory controls by reason of their shape, ugliness, or other distinguishing feature, there may be no reason to alter the existing statutory controls.**<sup>31</sup>

6.8. The Law Society understands that ‘no satellite dishes or cables have been refused planning permission in the Territory in residential areas’.

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<sup>31</sup> Emphasis added

6.9. The Law Society went on to observe that:

the Territory has the power to impose more prescriptive controls should it consider such controls necessary. [However,] the implementation of such controls may prove cumbersome in view of the small size and proliferation of these structures. [And] individuals might consider prescriptive controls confined to such structures as quite inhibiting.

6.10. The Master Builders Association of the A.C.T. submitted, in relation to telecommunications and power cables, that:

while the cost of undergrounding is higher, such costs are more than recompensed by producing an economically sustainable Canberra. this is vital if Canberra is to maintain its focus as the national capital.

## **7. SUMMARY OF EVIDENCE: INDIVIDUALS**

7.1. Dr Bourke submitted that ‘the existing amenity controls in A.C.T. planning and building legislation are inadequate to properly protect privacy’ in multi-dwelling developments. He noted that ‘many residents of multi-dwelling developments desire greater privacy to compensate for the loss of individual space’. He provided photographs showing the extent of overlooking from one dwelling onto another.

7.2. Further, he stated that existing guidelines about screens (to protect privacy) ‘have been infringed’ in his own case - which leads him to conclude ‘not only must there be appropriate guidelines, but also they must be enforced.’<sup>32</sup>

7.3. Dr Bourke submitted that:

The existing code for multi-dwelling developments requires that a minimum of 50 per cent of the private open space must be free from overlooking...

It is recommended that the overlooking controls should prevent a resident being observed in more than 50 per cent of their private open space.

7.4. In relation to setback provisions, Dr Bourke noted:

The existing minimum setback provisions in the code for multi-dwelling developments require six metre interface distance when there is an intervening fence or wall. In two-storey town house developments this leads to a very enclosed aspect...

It is recommended that the interface controls should require that dwellings have a minimum interface distance of 12 metres on at least one boundary if a screen wall is provided, otherwise 24 metres.

One of the objectives of the setback provisions is to provide sufficient area for planting to be undertaken to mitigate loss of privacy from overlooking. This objective cannot be met when the setback area is paved for a driveway.

It is recommended that the paved areas not be included when measuring minimum interface distances.

Furthermore, trees of at least six metres height are needed to mitigate loss of privacy between two storey dwellings which have upstairs windows facing each other. The root systems of such trees may extend to twice the height of the trees; to prevent tree root damage to paving or foundations they would need to be 12 metres away from buildings and paving.

It is recommended that the interface controls should require that two-storey dwellings which have windows facing each other have a minimum interface distance of 24 metres.

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<sup>32</sup> Dr Bourke Transcript 16/5/97 p32

7.5. For the same reason (to protect trees from root damage), Dr Bourke recommends that:

Open public space is needed around multi-dwelling developments to provide residents with the opportunity for outdoor recreation and to facilitate a landscape setting.

It is recommended that there be a nature buffer zone along at least one boundary of a multi-dwelling development.

7.6. In relation to screening of windows or balconies which overlook private open space, Dr Bourke recommends that the screening devices 'must be opaque'.

7.7. Further, he comments that the traditional assumption that 'bedrooms are [solely] rooms for sleeping in' does not take account of changing patterns of behaviour (for example, that bedrooms are often used as studies and hence may be occupied for lengthy periods in the daytime - and not just at night). This means that bedrooms which overlook a neighbour's private open space may be intrusive.<sup>33</sup>

7.8. In relation to sunlight, Dr Bourke observes that the present provisions do not 'protect the northerly aspect of dwellings and private open spaces from the shadow of buildings to their north'. Therefore, he recommends that 'the northerly windows and private open spaces of dwellings not be shadowed by other buildings'.

7.9. Where a two storey development has a view, Dr Bourke recommends that it not be allowed to be obstructed.

7.10. In relation to satellite dishes, Dr Bourke considers they 'should not be allowed to disrupt the roof outline'. In relation to overhead cabling for the provision of pay TV, he considers such cabling should not be permitted.

7.11. Miss Clingan submitted there should 'some formal control' about where 'large conifers and other dense evergreens' are sited, 'especially on small blocks of land such as in Charnwood and the newer suburbs'. She considers that the *Residential Design and Siting Code for Single Dwellings* in the Territory Plan should be amended to provide that large evergreen trees not be planted 'in close proximity to the north side of neighbours' clothes lines' or houses. She adds that overshadowing by evergreen trees adds to electricity consumption and reduces amenity.

7.12. Mr Eckermann (Principal of Eckermann & Associates) submitted that broadbanding networking 'will almost certainly involve aerial deployment of cables if it is to be economic' but that this should be accepted whenever the impact is 'modest'. He considers that the backyard wires are 'generally quite unobtrusive and... an additional cable [for telecommunications] will be equally unobtrusive'.<sup>34</sup>

7.13. Mr Eckermann notes that broadband networking is essential for the future prosperity of Canberra:

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<sup>33</sup> *ibid* p31

<sup>34</sup> *Transcript* 2/5/97 p11

We have an economy which is almost totally information based. You look at the Public Service, the tertiary institutions, CSIRO and the healthy research sector we have - the information technology community. Canberra is an information-based economy, and communications is to that sort of economy what oil is to a motor car... So we really have one of the best environments in Australia in which to develop new communications... [which will] give Canberra businesses the opportunity to pioneer some of the new sorts of applications that are involved and be right at the leading edge worldwide.<sup>35</sup>

7.14. Mr Eckermann pointed out that the new technology, for example, will allow:

a proportion of the workforce to work a proportion of their time from home. This would have a beneficial effect on the loading on Canberra's roads during peak hour, reduce traffic pollution and contribute to a better environment and lifestyle.

7.15. Miss Fitz-Gerald submitted that her residential amenity was detrimentally affected by the boarding surrounding a disused service station, which has remained in place for several years.

7.16. Mr Fortis submitted that his residential amenity was reduced by the tall trees on a neighbour's property, which block the extensive views to Lake Ginninderra that he once enjoyed. He considers that the value of his house 'has been substantially reduced' and that he should be entitled to 'a reduction in the amount of rates I pay'.

7.17. Mr Fortis appended a letter from the Minister for the Environment, Land and Planning (Mr Gary Humphries MLA), responding to Mr Fortis' concerns. The Minister's letter suggested that Mr Fortis may wish to investigate 'any common law remedies that may be available'.

7.18. Mr & Mrs Haustead submitted that 'an industrial size shed' on a neighbour's property was built 'without complying with the public notification process' and limits the amount of sun entering their residence. As well, the shed is very glaring and detrimentally affects their view.

7.19. Mr & Mrs Hogan are next door neighbours to Mr Fortis. They submitted that:

The law, as it presently stands, would appear to be unfairly biased towards the property owner who may do what he likes and 'to hell' with the neighbours. The trend is for smaller residential blocks and the issue of consideration of neighbour's rights [to a view] versus the individual property owner's rights [to privacy] needs to be reviewed and more balanced in certain situations.

7.20. Mr & Mrs Hogan submitted that the neighbour's shrubs resemble a ten-metre high wall along the back fence (which would not be permitted by officials) and that they 'have very little aesthetic appeal'.

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<sup>35</sup> ibid pp12-13

7.21. Mr and Mrs O'Callaghan submitted that the proposed redevelopment of a neighbour's block would 'completely remove our view of open space... which was one of the main reasons for our initial purchase of this property'. They also expressed concern that the proposed re-development would reduce visibility on a road bend 'by at least 50 per cent' and so will worsen the safety of the street.

7.22. Mr Wade submitted that most disputes between neighbours about access to sunlight can be resolved by negotiation. He considers that 'prescriptive controls as used for controlling tree growth near power lines would be less workable for controlling access to sunlight'. He notes that:

On the matter of access to views and visual amenity, there is an increasing amount of promotion of self sufficiency in residential housing, with some inter-State utilities promoting home-generated power using solar power cell panels. If this is to be encouraged, then some A.C.T. residents may wish to install various roof-mounted apparatus... Some flexibility in design and siting controls may be needed to allow the mounting of such apparatus where it can gain the maximum access to sunlight or wind.

7.23. Mrs Wales submitted that overhead cabling ruins the views of residents. She also expressed concern about the 'loss of sunlight during winter months due to neighbourhood trees'.

## **8. CONCLUSION**

8.1. Arising out of the evidence, the committee considers that an examination of amenity rights involves at least the following issues:

- a resident's right to access broadband networks (and other modern technology);
- a resident's right to sunlight;
- a resident's right to views;
- a resident's right to privacy, especially in multi-unit developments; and
- the role of the Commonwealth Government.

### ***A resident's right to access broadband networks (and other modern technology)***

8.2. The committee considers that the A.C.T. has much to gain from greater utilisation of broadband networks and other modern technology. It seems that many householders, and many businesses, want to access this technology as fast as possible. The new technology includes improved telephony, faster Internet access, home banking, home shopping, distance education, video conferencing and telecommuting.

8.3. The committee does not consider that it is the role of governments to place unreasonable restrictions on access to the new technology. Hence, the committee considers specific controls are required *only where there are reasonable grounds to consider that serious environmental or health costs will arise from the new technology*.

8.4. Further, the committee agrees in one respect with Optus, which pointed out that the key issue is the impact of infrastructure associated with the new technology - *regardless of whether that infrastructure is used for pay television or any other purpose* (see Chapter 5).

### ***A resident's right to sunlight***

8.5. The committee takes particular note of the Government's view that the existing provisions of the Territory Plan ensure that 'both solar access and views are to varying degrees captured within general requisite considerations of amenity, design, appearance, siting and access to sunlight' (see Chapter 2). The Government's submission stated that additional view protection measures would be 'impractical to implement'.

8.6. In drawing the committee's attention to her concern about the effect of overshadowing by a neighbour's tall evergreen trees, one submitter included copy of correspondence she received from Government planners which reads:

The Territory Plan, and the *Residential Design and Siting Codes* at Appendices III.1 and III.2, do not make any provision for restricting the size or species of trees that lessees can plant within the lease boundaries of

their blocks. Similarly, no approvals are required under the relevant Land and Planning legislation.

There is therefore no opportunity at present for this organisation to impose controls on landscape development on individual residential blocks, and PALM is not normally involved in this area of policy development.<sup>36</sup>

8.7. The committee notes that section 3 of both the *Residential Design and Siting Code for Single Dwellings* and the *Residential Design and Siting Code for Multi-Dwelling Developments* (dealing with buildings in relation to side and rear boundaries) set out two relevant Performance Criteria, namely, 'Dwellings to be sited to ensure good sunlight to their main private open space' and 'Buildings to be sited to minimise overshadowing of northern facades of adjacent dwellings and private outdoor spaces'.

8.8. The committee is concerned that, in practice, these Performance Criteria may not be maximising the opportunity for sunlight to reach residents. This is particularly important given the smaller block sizes in many newer suburbs. It also is important in multi-unit developments and especially in relation to northerly windows and private open space.

8.9. Notwithstanding PALM's advice (above), the committee is aware that existing regulations permit Government officials to take action in cases where a lessee's foliage overhangs and obstructs the passage of pedestrians along a pedestrian pathway - or where a resident's trees obstruct power lines. These provisions are regularly used. It is possible that some similar provision might be useful in relation to significant over-shadowing of one property (including its trees) by another.

8.10. The committee therefore recommends that:

- ***the Government review the existing policies that are intended to ensure residents can access sunlight to their main private open space and to the northern facade of their residences, in order to achieve the optimal balance between facilitating a resident's solar access while respecting the 'rights' of neighbours and the community.***

#### ***A resident's right to views***

8.11. The committee considers that *it is appropriate to require satellite dishes - and any infrastructure above the roofline - to utilise a finish that avoids glare, a colour that is compatible with the residence or other building, and to be located so as to reduce its silhouette against the skyline.*

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<sup>36</sup> Letter attached to submission by Miss Clingan. The organisation referred to is PALM (Planning and Land Management Group of the Department of Urban Services).

8.12. However, even when the above requirements are met, the committee acknowledges that some infrastructure (including some satellite dishes) will be unusually large or unusually coloured or very ungainly - and hence may significantly impact upon the environment (including on views). *The committee considers such structures should require specific consent by Government authorities.*

8.13. The Law Society submitted that some residents are seeking, and obtaining, approval for satellite dishes despite this not being strictly necessary (see Chapter 6). The Law Society suggests 'there may be some merit in cleaning up the legislative complexity'. The committee agrees.

8.14. The committee recommends that:

- ***the Government ensure applications for approval of structures such as television antennae and satellite dishes are made only when required. The committee understands this requires clarification of the Design and Siting provisions of the Territory Plan and the Buildings (Design and Siting) Regulations.***

8.15. The committee was told that Canberra has 30 percent of existing infrastructure undergrounded already, and that the balance is aerial and located mostly at the rear of blocks (see Chapter 2). Further, ACTEW suggests that, as existing electric wires wear out, they be replaced by aerial bundled cable with a further cable (for communications) strung below this one. In the first instance, this would apply only to the older areas (30 years or more).

8.16. In an ideal world, *all* such infrastructure - in the committee's view - should be placed underground. However, the Government's submission stated that even where existing services are underground, 'it is technically less expensive for carriers to provide poles and establish an aerial cable system than augment the underground system' (Chapter 2). The Government's submission pointed to the following costs (apart from those of trenching and installing cable): disruption to pedestrian and vehicular traffic, possible damage to heritage areas, and potential damage to existing trees due to disturbance to their root systems.

8.17. Given these costs, the committee accepts that aerial cabling will be favoured by telecommunications carriers and by utilities such as ACTEW. However, the committee is reluctant to endorse the installation of new poles just to carry telecommunication cabling. The committee considers the cable should be placed in the existing trenches that carry the electricity wires. The committee understands that the Commonwealth's new legislation and code endorses this approach.<sup>37</sup>

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<sup>37</sup> Mr Prattley *Transcript* 16/5/97 p26: 'One of the significant things, as I understand it from the legislation that has been passed and the Commonwealth's attitude, is that where services are undergrounded the carriers will be required to go underground unless there is some extraordinary reason why they cannot do so.'

8.18. The committee recommends that:

- ***the Government stipulate that, where existing electricity cabling is undergrounded, the new telecommunications cable also be placed underground.***

8.19. On the plus side, aerial bundled cabling is less sightly than the present four strands of electricity wire - *and it does not require the same extensive pruning of trees in its vicinity, which means that Canberra's landscaped setting is protected.*

8.20. *On this basis, the committee accepts that overhead cabling is an acceptable way to provide residents with access to the new telecommunication technology.*

8.21. However, the committee would be concerned if bundled cabling was installed *under existing wires, thus making a fifth wire on existing poles.* The committee considers that the addition of the bundled cable should only occur when the existing wires are themselves bundled into one cable. Provided this is done, the committee considers that a second bundled cable could be installed to carry telecommunications technology.

8.22. The committee recommends that:

- ***the Government permit the installation of overhead bundled cable to carry telecommunications technology only if, at the same time, the existing overhead electricity wires are bundled into one cable.***

8.23. The committee was told that, even if the electricity cables were replaced as suggested above, the phone wire would remain 'unless Telstra becomes a service provider on the broadband network and utilises [that] network for its telephone, Internet and whatever other service it wants to deliver to the Canberra market'.<sup>38</sup> The committee considers that the A.C.T. Government should all that it can to encourage Telstra to utilise ACTEW's overhead bundled cable.

8.24. The committee recommends that:

- ***the Government take steps to encourage Telstra to incorporate its phone wire into the same aerial bundled cable that carries telecommunications technology.***

8.25. The committee would be very disturbed if carriers were permitted to install poles which duplicated the existing ACTEW network. The committee favours just one carrier being responsible for the poles. This means that 'the competition should be at the service provider level rather than at the infrastructure level'.<sup>39</sup> *The committee supports ACTEW's efforts to interest the telecommunication carriers to utilise the existing network - in effect, making ACTEW 'a neutral player' while opening up its network 'to the widest possible array of service providers'.*<sup>40</sup>

8.26. The committee recommends that:

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<sup>38</sup> Mr Ceccato Transcript 13/12/96 p4

<sup>39</sup> Mr Ceccato Transcript 13/12/96 p2

<sup>40</sup> Mr Eckermann Transcript 2/5/97 p14

- ***the Government take all possible steps to ensure that ACTEW's existing infrastructure is used wherever possible to provide the new telecommunication technology, and support ACTEW's role as 'a neutral player' that opens up its network to the widest possible array of service providers.***

8.27. Further, the committee recommends that:

- ***the Government do all that it can to persuade the Commonwealth Government that the appropriate place for competition is at the service provider level rather than at the infrastructure level.***

8.28. The committee was very interested in ACTEW's observation that the new technology may be used to encourage Canberra businesses. ACTEW told the committee that its proposed network would:

flush out companies that have products and services to offer on the network. Usually they are local companies within Canberra. They are developing interactive services that could go on the network. Our aim is that if we do go ahead we will have at least five different products to offer on the network. We are encouraging companies and organisations such as the CSIRO to develop products in time for a network roll-out. One of the benefits of doing a network in Canberra is that it would be an ideal city to trial new services in. We would lead Australia in that, and probably the world.<sup>41</sup>

8.29. The committee recommends that:

- ***the Government encourage ACTEW to facilitate the entry of Canberra- based businesses to the new telecommunication technology.***

#### ***A resident's right to privacy, especially in multi-unit developments***

8.30. The committee was concerned about the evidence put forward by Dr Bourke in relation to the inadequate degree of privacy afforded to residents of a multi-dwelling development. While not agreeing in all respects with the recommendations suggested by Dr Bourke (see previous Chapter), the committee considers he has raised sufficient grounds to justify a review of the existing provisions relating to privacy.

8.31. The committee recommends that:

- ***the Government review the existing provisions relating to privacy in multi-unit developments with the aim of maximising the amount of private space and the maximum possible use of plantings to improve privacy and amenity.***

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<sup>41</sup> ibid p19 (Mr Ceccato)

### ***The role of the Commonwealth Government***

8.32. The committee joins State and local governments in expressing dismay that the Commonwealth Government has permitted telecommunication carriers to be exempt from the laws and planning regulations applying to all other utilities. While the new legislative regime introduced on 1 July 1997 has narrowed the extent of the exemption, it still grants immunity for a Low-impact Facility or where the carrier has an Installation Facility Permit (issued by the Commonwealth for a Low-impact Facility). The committee *considers that the A.C.T. Legislative Assembly should have the power and responsibility to determine the nature of controls over telecommunications infrastructure.*

8.33. In this regard, the committee is pleased that the A.C.T. Government has been able to exercise a greater degree of control than the States could exercise (see Chapter 2). The committee was told that:

We have been able to go further than the other States in [terms of controlling the siting of telecommunication towers] because of the controls we have had to date. For example, in Gungahlin, rather than allowing towers from different [carriers], we have made them go away collectively. We got all the operators together and made them do a strategic plan for the location of facilities, including co-sharing of facilities and so on.

They were reluctant to do that to start with, but they seem to be increasingly prepared to do that. I think they are learning that, in fact, it is in their interests to do so...

Our intention was that, if we could get them to do that well for Gungahlin, then we would want to extend that exercise across the rest of Canberra and a strategic plan for any remaining facilities in Canberra, so that you are not dealing with ad hoc applications all the time for towers popping up here and there.<sup>42</sup>

8.34. In relation to undergrounding telecommunication cabling, the Australian Local Government Association submitted that:

For many years, Telstra has been progressively undergrounding its existing telephone network driven by an evaluation of the 'whole of life' cost of underground versus an above ground network. Underground networks are initially more expensive to install but require far less maintenance, are more secure and less frequently interrupted (eg by motor vehicle accidents bringing down wires, etc). Over the life of the infrastructure, undergrounding infrastructure is cheaper.<sup>43</sup>

8.35. The Local Government Association went on to urge the Commonwealth Government to provide some incentive for carriers to consider undergrounding at the initial installation stage and also, if necessary, to consider undergrounding the cables

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<sup>42</sup> Mr Prattley Transcript 16/5/97 pp24-25

<sup>43</sup> Submission by the Australian Local Government Association (attachment comprising the Association's submission to AUSTEL)

at a later time when other cabling is placed underground. The committee agrees with the Local Government Association.

8.36. The committee recommends that:

- ***the A.C.T. Government urge the Commonwealth Government to facilitate undergrounding of telecommunications infrastructure (going into domestic residences) by the use of appropriate incentives.***

8.37. Within the A.C.T., the National Capital Plan sets out the Commonwealth Government's policy on assessing telecommunications proposals (see Chapter 2). The committee agrees that there should be a clear requirement for public consultation in relation to sensitive proposals, such as those on approach routes and in the Central National Area.

8.38. The committee notes a disparity between the National Capital Plan and the Territory Plan in relation to the height of structures requiring consultation and approval. The National Capital Plan stipulates that consultation occur where structures rise over ten metres over the roofline, whereas the Territory Plan stipulates that planning approval is required for structures over five metres in height (see Chapter 2). *The committee considers the lower figure is more likely to protect the amenity of residents.*

8.39. In relation to the Commonwealth telecommunication regime commencing on 1 July 1997, the committee's attention was drawn to a major study commissioned by the Commonwealth Department of Communications and the Arts (dated June 1997).<sup>44</sup> The study was commissioned by that Department:

in response to requests from State and Territory Governments for assistance with the preparation of common guidelines, definitions and a general framework for management of telecommunications infrastructure in the new regulatory environment post-1 July 1997.<sup>45</sup>

8.40. A Government official provided further detail on the study:

Basically, it is to examine and identify telecommunications facilities covered by their respective regulatory and policy requirements of State and Territory Governments, local councils and relevant Commonwealth bodies, and to produce a consistent or comparable set of definitions or assessment categories, criteria and processes that can be applied nationally, so that the operators are working within a reasonably consistent framework; the definition of things in one State is not totally different from what is going on in another State; and, as far as possible, there are consistent or comparable carrier protocols and approaches to conferring carrier powers in relation to land access and usage.

It is another area of the Commonwealth legislation that is unclear in terms of its impact, particularly when it starts to get into discriminatory

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<sup>44</sup> 'Getting the Message' - Guidelines for the Management of Telecommunications Infrastructure

<sup>45</sup> ibid Executive Summary pii

legislation or preventing discriminatory legislation. For example, it is suggested that ACTEW could not discriminate against [some other] carrier going and putting things on [ACTEW's] poles in people's backyards. For the A.C.T., that raises all sorts of questions - given that most of the powerlines are located in backyards rather than along the street. So, there is a whole range of issues that we cannot really give you definitive answers on yet.<sup>46</sup>

8.41. The committee was told that it will be some time before States and Territories have a clear idea of their powers in relation to low-impact facilities and the code of practise.<sup>47</sup>

8.42. The committee wishes to point out that:

it is silly to say that you have a low impact for, say, 13 millimetres in the A.C.T. when running down the back of somebody's yard there could be five or six low-impact wires of 13 millimetres. Suddenly, the thing is not a low impact; it is a high impact.<sup>48</sup>

8.43. Whilst pleased with the Commonwealth Government's willingness to reduce the exemptions granted to telecommunication carriers, the committee continues to feel that it is ultimately the A.C.T. Assembly, and Government, that should make decisions about the type and siting of telecommunications infrastructure in the Territory.

Michael Moore MLA  
Chair

7 October 1997

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<sup>46</sup> Mr Prattley *Transcript* 16/5/97 p23. Also see p25.

<sup>47</sup> *ibid* p24 (Mr Kwiatkowski)

<sup>48</sup> *ibid* p24 (Mr Moore MLA)

## **APPENDIX A: LIST OF WITNESSES AT PUBLIC HEARINGS**

13 December 1996

**ACTEW [TransAct Project Team]:** Ms Taylor (Project Officer) and Mr Ceccato (Senior Technical Officer)

2 May 1997

Mr Eckermann (Principal of Eckermann and Associates)

**ACTEW [TransAct Project Team]:** Ms Taylor (Project Officer) and Mr Ceccato (Senior Technical Officer)

16 May 1997

**A.C.T. Government [Planning and Land Management Group of the Department of Urban Services]:** Mr Prattley (Executive Director) and Mr Kwiatkowski (Manager, Compliance Section)

Dr Bourke

## **APPENDIX B: LIST OF SUBMISSIONS**

(The submissions are listed in order of receipt)

1. Queanbeyan City Council
2. Cooma-Monaro Shire Council
3. Local Government Association of Queensland Inc.
4. Mr & Mrs Haustead
5. Mrs M Wales
6. Eckermann & Associates
7. Australian Heritage Commission
8. Optus Communications Pty Limited
9. ACTEW Corporation
10. Master Builders Association. of the ACT
11. Mr R Wade
12. Dr C Bourke
13. Northern Territory Government - Office of the Chief Minister
14. Law Society of the A.C.T.
15. Queensland Minister for Local Government and Planning
16. Mr and Mrs O'Callaghan
17. Conservation Council of the South-East Region & Canberra (Inc.)
18. Local Government and Shires Association of NSW
19. Tasmanian Minister for Environment and Land Management
20. Miss D Fitz-Gerald
21. Mr & Mrs Hogan
22. Mr A Fortis
23. ACT Government
24. Miss J Clingan