



COMMUNICATIONS LAW CENTRE

INCORPORATING  OZ NetLaw

Review of Australia's Consumer
Policy Framework
Productivity Commission
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To whom it may concern

Draft Report on the Review of Australia's Consumer Policy Framework

Thank you for the opportunity to make submissions in response to the Draft Recommendations included in the 'Draft Report on the Review of Australia's Consumer Policy Framework'.

The Communications Law Centre (CLC) is an independent, non-profit, public interest organisation specialising in media, communications and online law and policy. The CLC was afforded the opportunity of appearing before the Productivity Commission constituted by commissioners Mr Robert Fitzgerald, Mr Gary Potts and Mr Philip Weickhardt, at Melbourne on 20 March 2007. In making these submissions, we are mindful of the key points made Mr Moustakas - then a Legal Officer at the CLC - at the time of his appearance at the Commission, some of which included:

- THAT whilst self-regulation is the appropriate means of regulating the telecommunications sector, the current means of enforcement of such codes is both inefficient and ineffectual.
- THAT the system of self-regulation is hampered by the lack of reporting requirements operative on telecommunications suppliers.
- THAT at an enforcement level the system of self-regulation is shown to be deficient in the fact that the Australian Communications and Media Authority has issued only two enforcement notices against telecommunications suppliers for breach of registered codes in over ten years.
- THAT whilst there may be some claims of duplication of laws in the telecommunications industry, the lack of enforcement means that there is not an unnecessary regulatory burden on telecommunications suppliers.
- THAT there is a lack of funded consumer advocacy which is disproportionate to a rise in the number of problems encountered by consumers in negotiating an increasingly complicated telecommunications sector.
- THAT the lack of funding moreover impacts on the ability of consumer lobby groups to explain issues to industry and assist in the formation of registered codes.
- THAT the Telecommunications Ombudsman should be replaced by a Communications Ombudsman to accommodate for issues of convergence.

We further draw your attention to several reports prepared over the past few years that have discussed issues pertinent to the telecommunications industry and issues faced by consumers. These have included:

- Report of the Senate Environment, Communications, Information Technology and the Arts Committee, *'The Performance of the Australian Telecommunications Regulatory Regime'* (19 August 2005), the major theme of which was the over-reliance on self regulation within the telecommunications industry.
- Report of the ACA, *'Consumer Driven Communications: Strategies for Better Representation'* (December 2004), which raised criticisms such as the lack of participation from consumers within the industry and the strong influence of telecommunications suppliers.
- Report of the Senate Environment, Communications, Information Technology and Arts Committee, *'A lost opportunity? Inquiry into the provisions of the Australian Communications and Media Authority Bill 2004 and related bills and matters'* (March 2005), which referred to the inefficiencies and the problems with convergence, i.e. that the various self-regulatory bodies were industry specific where increasingly such industries overlapped.

We have now had the opportunity to review the contents of the Draft Report prepared by the Productivity Commission. We are pleased that the Draft Report touches on a number of the points that are of concern to the CLC. In particular, and having regard to our previous submissions about the telecommunications self-regulatory scheme, we are pleased to see that the Draft Report proposes a number of initiatives geared towards imbuing a greater sense of efficiency and economy in the operation of the scheme, including:

- an increased focus on reporting requirements in problem areas, informed by feedback from stakeholders;
- a CoAG oversight program to repeal unnecessary specific consumer regulation and to determine how costly divergences and lack of policy responsiveness in other areas should be reduced, leading to more streamlined and less costly specific regulatory regimes.

Whilst we support such initiatives and the focus on industry compliance and effective regulations, we are nonetheless concerned that such a focus may occur at the expense of the endemic enforcement problems of the telecommunications sector. We note in particular the Commission's comments;

"While some participants in this inquiry claimed that the enforcement of telecommunications codes needs strengthening, the key deficiency may be the codes themselves rather than their enforcement... As companies continue to institute better processes and gain experience, it is generally seen as sufficient, at least for the time being, to strengthen compliance monitoring and better educate providers, rather than to revoke licenses or introduce more prescriptive regulations."

We reiterate that the Australian Communications and Media Authority has an abysmal track record in serving offending suppliers with infringement notices. We believe that the compliance mechanisms proposed by the Productivity Commission may prove incapable of affecting substantial change to the industry without a more realistic threat of enforcement. We submit that, contrary to the above statements from the Commission, this would not necessarily need to involve

greater powers for ACMA to 'revoke licenses or introduce more prescriptive regulations'. It is the position of the CLC that the current failings are not attributable to a lack of the tools of enforcement, but rather are caused by an evident disinclination to use such tools. Whilst the CLC is not in a position to speculate as to why ACMA has not been more rigorous in enforcing code, the body does seem to suffer from a lack of funding.

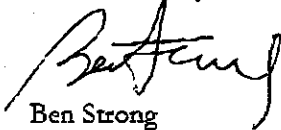
Finally, we note and support the Draft Report's initiatives seeking to provide better access to assistance to consumers, in particular:

- the formation of one national consumer complaints database (AUZSHARE);
- a wider role for the Telecommunications Industry Ombudsman.

We would further be pleased to see an enhanced role for the ACCC in the operations of any consumer complaints database.

Once again we thank you for the opportunity of making these submissions.

Yours faithfully



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