



Australian
Mobile Telecommunications
Association
ABN 98 065 814 315
First Floor
35 Murray Crescent
Griffith ACT 2603 Australia
PO Box 4309
Manuka ACT 2603 Australia
Ph +61 2 6239 6555
Fax +61 2 6239 6577
Web www.amta.org.au

AMTA Submission
Productivity Commission's Draft Report
"Towards a National Framework for Consumer Policy"

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1 Executive summary

The Australian Mobile Telecommunications Association (**AMTA**) welcomes the opportunity to comment further on the Productivity Commission's Draft Report, "Towards a National Framework for Consumer Policy".

AMTA agrees with the intended aims of a nationally consistent framework for consumer policy, particularly in relation to delivering to consumers and businesses a more efficient and responsive consumer protection regime with reduced regulatory burden on industry including minimising duplication and inconsistency between the States, Territories and the Commonwealth.

AMTA takes a keen interest in consumer issues and regularly engages in telecommunications-related consumer policy and regulatory debates. AMTA through its various educational initiatives has actively sought to assist consumers of all ages to enjoy the benefits of mobile telecommunications products and services in a financially affordable and responsible manner. This has included producing consumer tips sheets on issues as diverse as financial management, safe driving and prevention of cyber bullying. AMTA has also produced a website for young people addressing a number of issues relating to mobile phone use. AMTA also uses feedback from consumers to inform its advisory initiatives.

AMTA wishes to raise a number of issues and points for clarification in relation to the Productivity Commission's Draft Report.

2 Introduction and overview

2.1 Introduction

AMTA is the Australian mobile industry's peak body. AMTA's members include mobile phone carriers, handset manufacturers, retail outlets, network equipment suppliers and other suppliers to the industry. AMTA's mission is to promote a socially, environmentally and financially responsible and successful mobile telecommunications industry in Australia. For more details about AMTA, see <http://www.amta.org.au>.

2.2 Overview of AMTA's position

AMTA provided comments and suggestions in relation to the Productivity Commission's first document '*Review of Australia's Consumer Policy Framework*' in May 2007 and appreciates the opportunity to provide further comments on the latest Draft Report.

As outlined in AMTA's previous submission, the *Telecommunications Act 1997* ("**the Act**") establishes a framework for telecommunication regulation that "promotes the greatest practicable use of industry self-regulation"¹ The Act is administered by the Australian Communications and Media Authority (**ACMA**) and provides for the development of industry codes.

Without reiterating the mobile telecommunications regulatory framework previously detailed in AMTA's submission in May 2007, the mobile telecommunications industry operates under a complex regulatory model that can be described as 'co-regulatory'. This environment presents different degrees of industry and government initiation of 'self-regulatory' initiatives, significant use of government delegated legislation, overlapping and inconsistency between jurisdictional and agency responsibilities, and numerous bodies developing policy without adequate

¹ *Telecommunications Act 1997, Section 4a.*

reference to, or knowledge of, initiatives or regulatory responses developed by other bodies or agencies.

This kind of duplication and overlap can lead to confusion among suppliers and their customers as to their obligations and rights. Consumers particularly may find the complaints procedures and processes across different jurisdictions, for the same services and products, confusing and leading to a perception of less than satisfactory or timely resolution of issues.

The mobile telecommunications industry has sought to engage constructively and proactively with government and relevant agencies to develop a more streamlined policy framework for the mobile telecommunications environment that delivers an efficient and competitive mobile telecommunications industry through the supply of innovative and diverse services that ultimately benefit consumers.

AMTA agrees with the intended aims of a nationally consistent framework for consumer policy, particularly in relation to delivering to consumers and businesses a more efficient and responsive consumer protection regime with reduced regulatory burden on industry including minimising duplication and inconsistency between the States, Territories and the Commonwealth.

3 Specific Comments

3.1 Objectives for Consumer Policy

- **Draft Recommendation 3.1**

AMTA supports the Commission's view that effective competitive markets without constraints on the availability of information are likely to deliver the best outcomes for consumers. In supporting this objective AMTA reiterates its comments in the May 2007 submission in relation to the enactment of new regulation being supported by a rigorous cost benefit analysis regime.

AMTA recommends the inclusion of a seventh formal operational objective:

“Ensure that new regulations are enacted only if they are based on evidence, where cost benefit analysis has determined that a problem exists and that the introduction of regulation would assist manage or resolve the problem, and where it does not duplicate or overlap with existing regulation.”

3.2 A New National Generic Consumer Law

- **Draft Recommendation 4.1**

AMTA supports the development of a national generic consumer law that applies across all Australian jurisdictions. Currently, areas of consumer law are covered by various Acts, regulation, codes and standards at Federal, State and Territory levels. In the development of a national generic consumer law all of these areas of jurisdiction need to be comprehensively identified and most appropriate responses need to be determined and a national generic consumer template applied across all Australian jurisdictions.

In accepting a national generic consumer law however, it is AMTA's view that consumer protection law should not apply to small or large businesses.

AMTA recommends that the definition of consumer in consumer protection law should apply to a person that:

(a) acquires goods or services of a kind originally acquired for personal, domestic or household use; and

(b) use those goods or services for the primary purpose of personal, domestic or household use.

3.3 Unfair Contract Terms in Standard Form Contracts

- **Draft recommendation 7.1**

AMTA supports the Commission's proposal to incorporate a provision into a new generic consumer law that voids unfair terms in standard form contracts where a number of specific criteria have been met, including that there is evidence of material detriment to consumers and that there is an overall public benefit from remedial action. This would provide greater certainty to business.

AMTA would like to point out that there is an industry code relating to unfair contract terms (ACIF C620:2005) that is administered by ACMA. In supporting the implementation of a generic consumer law AMTA's preference would be to review this code and determine its appropriateness in relation to a national framework.

3.4 Access to Remedies

- **Draft Recommendation 9.1 & 9.2**

AMTA believes that the Commission's draft recommendation in 9.1 for the participation of all consumer regulators in a national database of serious complaints and for the implementation of a web-based information tool for consumers, will lead to more efficient and effective referral of complaints, and the alleviation of any consumer confusion about where to take their telecommunications-related concerns and complaints.

AMTA submits that implementing draft recommendation 9.1 would be a much more efficient proposal than the Commission's draft recommendation 9.2 to extend the jurisdiction of the TIO, which AMTA believes is both unnecessary and inappropriate.

AMTA does not support the expansion of the functions of the TIO.

- **Draft Recommendation 9.5**

AMTA submits that there are existing appropriate and adequate procedures in place for representative actions to be taken.

AMTA does not support a provision that allows consumer regulators to take representative actions on behalf of consumers.

3.5 Enforcement

- **Draft Recommendation 10.1**

AMTA submits that there are a suite of remedies already available to regulators to effectively enforce consumer protection laws and that there is insufficient justification disclosed in the Commission's report to support further enforcement instruments which will inevitably increase the regulatory burden on industry.

3.6 Disclosure Requirements on Firms

- **Draft Recommendation 11.1**

AMTA supports in-principle disclosure requirements on firms only where such regulation is clearly necessary and reasonable. However, AMTA submits that further clarification is required in relation to the process for consumer testing and how, if deficiencies are found, what agency would be responsible for determining what amendments are necessary and what would be the consequences of a failure to comply.

4 Conclusion

AMTA reiterates its support in principle with the intended aims of a national framework for consumer policy, particularly in relation to delivering to consumers and businesses a more efficient and responsive consumer protection system with less duplication and inconsistency between the state, territories and the Commonwealth.

AMTA thanks the Productivity Commission for the opportunity to provide further input on the development of the framework prior to the submission of its report to the Government.