

**COMMUNICATIONS  
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**Australian Law Reform Commission: Equality,  
Capacity and Disability in Commonwealth Laws**

**COMMUNICATIONS ALLIANCE SUBMISSION**  
June 2014

Communications Alliance welcomes the opportunity to provide this short submission in response to the Australian Law Reform Commission's Discussion Paper, *Equality, Capacity and Disability in Commonwealth Laws*, with respect to the discrete matter of consumer protection laws.

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

It is in this context that we have responded to question 11.1 in the Discussion Paper:

*Should provisions similar to the responsible lending provisions of the National Consumer Credit Protection Act 2009 (Cth) apply to other consumer contracts? That is, should businesses have obligations to ensure that a consumer contract is suitable for the consumer, including making all reasonable inquiries and ensuring that the consumer fully understands the contract terms?*

Communications Alliance acknowledges that there is a delicate balance between the important responsibility to protect vulnerable people, such as those with some form of mental impairment, while maximising people's opportunities to fully participate in society, including by accessing goods and services.

We believe that the legal and regulatory framework governing the telecommunications sector is robust and provides a reasonable and fair balance between protection and participation:

- The Australian Consumer Law (ACL) contains a range of protections for consumers who may have entered a contract without understanding its terms. This includes contract cooling off periods and remedies for unreasonable conduct relating to, for example, door-to-door and unsolicited sales. There are also relevant consumer protections in the ACL that prohibit unconscionable conduct. Relevantly, certain conduct may be unconscionable if it is particularly harsh or oppressive or where one party knowingly exploits the special disadvantage of another. In practice, many service providers release customers from contracts without penalty should it be revealed that, due to a disability or other disadvantage, a customer failed to understand or did not have the capacity to understand the terms of the contract at point of sale.

- The Telecommunications Consumer Protections Code (the TCP Code), which is enforceable by the Australian Communications and Media Authority, contains extensive obligations on suppliers with respect to interactions with consumers, including specifically consumers with disabilities and disadvantaged and vulnerable consumers. Further, the TCP Code requires suppliers to make available a ‘critical information summary’ which is a comparative tool designed to assist all consumers in understanding various offers.
- The Telecommunications Industry Ombudsman is an industry-funded, independent, alternative dispute resolution scheme that operates under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. It provides complaints resolution services to consumers at no charge in circumstances where a consumer has been unable to resolve a complaint with their provider.
- There are also already a myriad of information disclosure requirements in the telecommunications sector designed to protect consumers.

Communications Alliance also notes the Commonwealth Government’s current deregulatory agenda. For example, the Department of Communications’ May 2014 policy paper, *Regulating harms in the Australian communications sector*, highlights (page 4) that:

*Reducing regulation and ensuring that it is fit-for-purpose is a major priority and focus in the Communications portfolio. The Government’s aim is to deliver real reform in the Communications portfolio through better regulation, which lowers the cost burden on business, while maintaining necessary consumer and other safeguards.*

The paper also states (page 5) that:

*... the design of regulatory interventions needs to be informed by good market analysis, an in-depth understanding of the risks and preferences of, and costs to, consumers, end-users and business and the testing and validation of options.*

Communications Alliance is further concerned that it would be very difficult in practice for telecommunications providers to comply with provisions such as those in the *Consumer Credit Protection Act 2009*. Such provisions are not ‘fit-for-purpose’ in our sector. There are fundamental differences between the nature of financial sector lending arrangements and consumer contracts for telecommunications products. For example, the monetary figures involved, sales cycle timeframes and the information available to providers to determine suitability. It is much more difficult, for example, for a bank to write-off a loan that has already been spent by a customer, than for a telecommunications provider to simply cancel a customer’s contract and cease provision of a service. The practical effect of financial sector provisions being applied to the telecommunications sector could well

be that people with disabilities would be unfairly restricted in their ability to access telecommunications goods and services.

Were regulations introduced that, for example, required our members' sales representatives to ask a set of mandatory questions to consumers to determine if they were competent to sign a contract (as noted in paragraph 11.16 of the Discussion Paper), this would materially increase the financial and time burden on providers and require frontline staff to make judgement calls about a person's competence. Importantly the practical outcome would be that such a set of mandatory questions would need to be asked of all consumers. While this would be a needless irritant for the majority of consumers and a detriment to their experience, one unintended negative consequence is that it could well cause distress and frustration for consumers with various disabilities that have no relevance to their competence and right to enter into a contract for telecommunications products.

This is a difficult and sensitive issue. It is Communications Alliance's considered view that, with respect to the telecommunications sector, a robust legal and regulatory framework already exists to reasonably, fairly and practicably protect the interests of vulnerable consumers while maximising their opportunity to access telecommunications goods and services. We would not support additional regulation in this area such as that contemplated by question 11.1



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