

**COMMUNICATIONS  
ALLIANCE LTD**



**ACCC Division 12 and Internet Activity Record  
Keeping Rule (RKR) review**  
COMMUNICATIONS ALLIANCE SUBMISSION  
July 2020

## CONTENTS

<b>INTRODUCTION</b>	<b>2</b>	
<b>GENERAL COMMENTS</b>	<b>2</b>	
<b>Commencement</b>	<b>2</b>	
<b>Combination of Division 12 and Internet Activity RKR</b>	<b>2</b>	
Declarations		3
<b>Upload data</b>	<b>3</b>	
<b>Definitions – Home Wireless Broadband</b>	<b>3</b>	
<b>DIVISION 12 RKRS</b>	<b>3</b>	
<b>4. Application</b>	<b>3</b>	
<b>6. Reporting requirements</b>	<b>3</b>	
<b>Schedule B: Mobile Services Information</b>	<b>4</b>	
SMS		4
<b>Schedules B &amp; C: Bill Provision</b>	<b>4</b>	
<b>INTERNET ACTIVITY RKRS</b>	<b>5</b>	
<b>Schedule A</b>	<b>5</b>	
<b>Schedule D</b>	<b>5</b>	
Wholesale SIOs by MVNO		5

### About Communications Alliance

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>.

## INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission to the Division 12 and Internet Activity Record Keeping Rule (RKR) Review.

We support the goal of ensuring the Rules are updated to reflect current communications markets and consumer preferences, and to reduce the regulatory burden where appropriate. We broadly support the removal of duplicative or outdated requirements and amalgamation of categories proposed in the revised drafts.

Below, we offer specific comments on some of the proposed changes and responses to the questions posed in Section 6 of the consultation paper. Our most significant concern is the proposed addition of a requirement to report wholesale SIOs by MVNO.

*Note: Schedules referenced in this submission refer to the Schedules in the proposed drafts, not those in the current rules.*

## GENERAL COMMENTS

This paper will address many of the general questions (and those posed specifically to carriers and carriage service providers) in the sections on specific proposed changes, but we will address some of the questions from Section 6 of the consultation paper and overall topics here.

### Commencement

We appreciate the ACCC's acknowledgement of the challenges being faced due to the COVID-19 pandemic, and thus the proposal to include a sufficient amount of time prior to commencement of any changes. We agree with the commencement timing proposed in section 1.2 of the consultation paper for any altered categories or changed definitions.

That being said, the proposals to fully remove some of the required categories of data could be implemented earlier by providers, as they won't require changes to definitions or data categorisation. This would allow some of the benefits in reduction of regulatory burden to take effect earlier, and as the ACCC has identified this data has less relevance and utility, without any negative impacts on the ACCC or consumers.

### Combination of Division 12 and Internet Activity RKR

We support the combination of the RKR with annual reporting (Option 1) - with one concern regarding the Declarations, noted below. We would also appreciate the opportunity to further engage with the ACCC on timeframe details of a combined instrument. For example, the Reporting Periods for the Internet Activity RKR are two specific 3-month periods leading up to the current reporting dates – how would the Reporting Period timeframe be impacted by a combined instrument?

That being said, the combination of the rules with an annual reporting period would create significant savings for providers, reducing regulatory burden without negatively impacting the ACCC's regulatory powers. One member has reported that Option 1 would result in a 60% saving vs the current reporting schedule.

However, we would not support Option 2, which would result in additional reporting (as it would require the data from Division 12 to be reported bi-annually). Option 3 would be preferable to Option 2 as it would – at a minimum – not increase the current burden, but this does not appear to be in line with the ACCC's goals in this revision.

## **Declarations**

The requirement in the Division 12 rules (Schedule E) to have the declaration signed off by the Chief Executive Officer or Chief Financial Officer would present significant challenges with a 31 August due date due to scheduling challenges.

If the rules are to be combined, we recommend that the Declaration as in the Internet Activity Rules be retained and adopted for the combined instrument.

If this is not possible, we would then recommend a submission date of 15 September (instead of 31 August) for the combined instrument – which would align with the currently proposed deadline for the Division 12 rules.

## **Upload data**

We understand that some stakeholders may see upload data as useful information. Considering the significant lead time proposed for any of these changes, we do not have an issue with the inclusion of upload data as proposed on pg 16 of the consultation paper.

## **Definitions – Home Wireless Broadband**

We recommend the ACCC further clarify the proposed definition of “Home Wireless Broadband.”

The terminology fixed modem is a main point of confusion, both in clarity and questions of if it appropriately captures the category. As to clarity, there is a question of if this refers only to modems that require mains power, and are therefore stationary within a premise.

On whether fixed modem is the right terminology to capture the intended category, there are two points. One, it is possible for a carrier to not offer any ‘fixed modem’ products – the products on offer could include SIM-only, dongle, or SIM with portable battery modems, but that may be intended for use, or sold, as ‘home wireless broadband.’ Second, there are many ‘fixed modems’ that can have a SIM inserted into them. Thus, a SIM potentially sold as a mobile SIM could then be used as a ‘home wireless broadband’ service – but it would not be appropriate to ask customers to report to their providers if and how they are using each of their SIMs at all times.

We would be interested in further discussions with the ACCC on this definition to resolve these questions and ensure that the definition is clear.

# **DIVISION 12 RKRS**

## **4. Application**

We do not object to the addition of Vocus to the Division 12 Record Keeping Rule.

## **6. Reporting requirements**

As noted in the previous section on Declarations, we have some concerns with Schedule E as currently drafted. However, 6(6) in the draft Rules has revised wording – it states that the report must be accompanied by the declaration of the employee of the CSP, where previously 8(1) specified that the declaration must be signed by the CEO or CFO.

We fully support the new text in 6(6), but would request that Schedule E be revised to align with that change.

## **Schedule B: Mobile Services Information**

### **SMS**

The proposed addition of "Total number of SMS" to Schedule B of the Rules will add additional regulatory burdens without any seeming regulatory or consumer benefit.

Industry is seeing decreasing use of SMS, with over the top (OTT) services being used instead. As noted in the Consultation paper, the ACCC concluded in their June 2019 MTAS report that SMS termination "should not continue to be a declared service,"<sup>1</sup> due to a range of factors including that decrease in SMS usage and increased use of OTT services. In that report, the ACCC also raised the competitive pressure from those OTT messaging services and the competitiveness of the SMS offers available to consumers as relevant changes. The reasons for this decision presented in the MTAS report do not state that there is a need for ongoing oversight of the service, and this consultation paper does not establish one.

Additionally, SMS is typically included as an unlimited service in mobile plans, and in circumstances where that is not the case, the pricing is publicly available.

With this in mind, we do not see how gathering data on the number of SMS would align with the purposes of the Rules under the Act. 151BU(4B) of the Act states that when reviewing Record Keeping Rules, one of the factors the Commission must have regard to is "whether consumer demand for the goods and services to which the information relates has changed."

Considering the decreasing demand for SMS, and the publicly available information on SMS pricing, we do not see that adding a requirement on SMS to the Rules provides any regulatory or public benefit, but it would add regulatory burden.

SMSs have a number of categories, including – for example – those sent during the bushfire and COVID-19 crises this year, as requested by the government. Providing data on the number of SMS sent and received during the recording period would require compiling and cleaning data from multiple systems, requiring additional resources.

There does not appear to be a consumer benefit to justify this additional regulatory burden.

### **Schedules B & C: Bill Provision**

We oppose the ACCC's proposal to change the requirement for Bill samples for both mobile and internet services from 385 bills every 3 years to 100 bills every year.

This is a tripling of regulatory burden, as the frequency of pulling the samples is a much higher factor in the burden than the number of bills to be pulled with minimal (if any) regulatory benefit.

We understand from the consultation paper that the ACCC uses this bill sample information for weighting calculations in the annual Communications Market Report. However, bill samples do not provide clear or accurate information on consumer experience as there are large variations in structures of individual accounts (e.g., family plans) and different payment arrangements (such as financial hardship assistance) that is not contextualised within the bill data collected.

The publicly available data on plans and pricing the ACCC refers to elsewhere in the consultation paper will provide more relevant and indicative data of consumer experiences, and more appropriate information for the Communications Market Report.

---

<sup>1</sup> Mobile terminating access service declaration inquiry 2018, Final Report June 2019. p 22.

## INTERNET ACTIVITY RKRS

### Schedule A

Communications Alliance does not have a comment on the proposed addition of IPStar and SkyMesh to Schedule C of the IA RKRS.

### Schedule D

#### Wholesale SIOs by MVNO

There is no clear need for the proposed data breakdown of SIOs by individual MVNO, there is limited data available, and fulfilling this obligation would add significant regulatory burden.

Wholesalers typically have arms-length contract arrangements, which include not having information about the number of SIOs the MVNO actually has in service. This means that the available data would not touch on active services, but solely on wholesale contracts.

Additionally, many contracts for the captured RSPs are to providers who then on-sell the services to RSPs (resellers), who have the contracts with the end-users (and at times there are multiple steps in that reselling chain). It is unclear from the proposed instrument if the ACCC is requesting for this data to be broken down solely by the wholesale purchase parties (who may not be MVNOs that contract with end users), or if they are requesting the data be broken down by MVNOs who contract with end users, which is not available data.

For the limited data that is available, this would be a significant increase in regulatory burden, as this data is kept in differing systems.

In the consultation paper, the ACCC notes that this is to “provide a more complete picture of the mobile market and enable the ACCC to monitor competition at a wholesale level more effectively.” The RKRS already require providers to report wholesale SIOs overall, which gives the ACCC the needed data for monitoring wholesale competition.

Beyond this broad statement, the ACCC does not present any consumer detriment or market concerns that would be resolved with this data. There is competition in this market, with opportunity for MVNOs to test the MNO market and ensure they are on the most appropriate contract.

Considering the extreme increase in regulatory burden from this requirement and the limited data that would actually be available, there needs to be a detailed and evidenced case made to be discussed and balanced against the costs.



Published by:  
**COMMUNICATIONS  
ALLIANCE LTD**

Level 12  
75 Miller Street  
North Sydney  
NSW 2060 Australia

Correspondence  
PO Box 444  
Milsons Point  
NSW 1565

T 61 2 9959 9111  
F 61 2 9954 6136  
E [info@commsalliance.com.au](mailto:info@commsalliance.com.au)  
[www.commsalliance.com.au](http://www.commsalliance.com.au)  
ABN 56 078 026 507