

14 February 2008

Jill Irvine
Productivity Commission
PO BOX 80
BELCONNEN ACT 2616

Email: consumer@pc.gov.au



Dear Ms Irvine,

Subject: Productivity Commission's 'Review of Australia's Consumer Policy Framework' Draft Report: Submission by Communications Alliance

Thank you for providing us with the opportunity to comment on the Productivity Commission's 'Review of Australia's Consumer Policy Framework' Draft Report. Our comments are set out below.

Please let us know if you have any queries regarding these comments.

Yours sincerely

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Productivity Commission's
'Review of Australia's Consumer Policy Framework'
Draft Report
Submission by Communications Alliance

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Productivity Commission's

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

Submission by Communications Alliance

1 Introduction

Communications Alliance is pleased to have the opportunity to comment on the Productivity Commission's Draft Report on its Review of Australia's Consumer Policy Framework (the Draft Report). This additional submission is complementary, where appropriate, to Communications Alliance's first submission on the Productivity Commissions Issues Paper.

Communications Alliance is the peak telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer 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 behavior through industry self-governance.

Communications Alliance believes it is in the best interests of all participants, customers and government that the industry takes responsibility for devising practical, self-imposed solutions that are developed by co-operative processes.

In doing so, Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

2 Executive Summary

Communications Alliance thanks the Commission for the important work it has done through its Review of the Consumer Policy Framework.

Communications Alliance would like to restate its firm commitment to an effective consumer protection regime in Australia.

It is our view that any discussion on the consumer policy framework must take into account the fundamental policy objectives of the *Telecommunications Act 1997*. These are:

- A regulatory framework that promotes the 'long-term interests of end-users of carriage services' (s3(1)); and
- The maximum use of industry self-regulation without imposing undue cost on suppliers (s4)

We note that a significant suite of consumer protections and industry-specific codes already exist. However, there is substantial room for improvement in the consumer policy framework in Australia.

Communications Alliance submits that any proposal for legislative change to the generic framework must adhere to the policy objectives of the *Telecommunications Act*, specifically the emphasis on the maximum use of self-regulation. It follows that discussion on the overall consumer policy framework in Australia should be intimately informed by existing industry codes. We consider that regulators and industry must ensure that the implementation of a national generic consumer policy framework recognises and has due regard to current consumer protection standards as encapsulated in the industry codes of practice and standards.

In that context and as previously submitted, Communications Alliance strongly supports the broad goal of a nationally consistent and simplified consumer policy framework. We support the articulation of consistent national objectives and the establishment of a national generic consumer law for the consumer policy framework in Australia.

It is our view that the removal of duplication and the nationalisation of approach to consumer protection policy will have considerable benefits for both industry and consumers.

Communications Alliance broadly supports the draft report of the Productivity Commission with a few exceptions. More detailed responses to specific recommendations are set out below. Communications Alliance has chosen not to respond to all the recommendations made by the Commission. The absence of comment on any particular matter should not be construed as either support or opposition.

3 Specific Comments on Draft Recommendations

Draft Recommendation 3.1

Communications Alliance supports the Commission's draft recommendation that Australian Governments should adopt a common overarching objective for consumer policy. It is our view that this is necessary given the lack of a clear nationally consistent statement of objectives.

We note that our members broadly support this recommendation and submit that adoption of a common objective should not increase the regulatory burden on industry.

Some of our members have suggested the addition of various operational objectives. We submit that further consultation with industry should occur before the wording of a common overarching objective is settled.

Draft Recommendation 4.1

Communications Alliance strongly supports the Commission's draft recommendation to establish a new national generic consumer law to apply in all jurisdictions.

We reiterate our position that the policy objectives of the Telecommunications Act should be adhered to when developing this law.

It is the view of our members that the myriad of instruments which create the consumer policy framework in Australia result in unnecessary and costly confusion, duplication and over-regulation in many instances. Importantly, these inefficiencies end up costing the consumer and industry.

We submit that the development of any national generic law should ensure that overlapping and duplicative obligations are rationalised wherever possible to remove confusion and create regulatory certainty for the industry and consumers.

Communications Alliance supports our member's submissions that the definition of consumer should not include small or large business for the purpose of consumer protection law.

Draft Recommendation 5.1

Communications Alliance supports the Commission's draft recommendation for CoAG to instigate and oversee a review and reform program for industry-specific consumer regulation.

We have previously submitted that the consumer policy framework in Australia would benefit from rationalisation. Broad assessment of industry-specific consumer regulations with a view to the removal of duplication and unnecessary provisions will assist in achieving this objective. We submit that this process should be conducted in conjunction with the development of a national generic law with an emphasis on removing industry-specific regulation where possible and appropriate.

Draft Recommendation 7.1

Communications Alliance supports the Commission's draft recommendation that a new provision should be incorporated in the new national generic consumer law that voids unfair terms in standard form contracts where various criteria have been met as outlined by the Commission.

We note that a current industry code deals with unfair terms in contracts. ACIF C620:2005 Consumer Contracts was registered with the Australian Communications Authority (now Australian Communications and Media Authority - ACMA) by the Australian Communications Industry Forum (now Communications Alliance) on 4 May 2005.

We further note that a consolidated Telecommunications Consumer Protections Code (C628:2007) has been developed by Communications Alliance and will replace the Consumer Contracts Code once registered by ACMA.

Communications Alliance submits that any debate on the inclusion of a new provision that voids unfair terms in contracts in a national generic consumer law should be informed by this Industry Code. This discussion should include an objective assessment of whether part (or all) of the Code should be withdrawn.

Draft Recommendation 9.1

Communications Alliance supports this draft recommendation.

Draft Recommendation 9.2

Communications Alliance does not support the Commission's draft recommendation to extend the functions of the Telecommunications Industry Ombudsman (TIO) to all other telecommunications premium content services, pay TV and other services and hardware.

The TIO is a member-funded organisation. CSP/ISP members of Communications Alliance are members of the TIO. Our members value highly the TIO scheme and its role in supporting the self-regulatory objective of the framework. Any increase in the functions of the TIO will potentially add to the cost of the Scheme and may potentially impact adversely on the ability of the TIO to fulfil its current ADR functions.

We submit there is not sufficient evidence to justify the extension of the functions of the TIO at this time. Our members contend that the current ADR arrangements are adequate to assist consumers in resolving their disputes.

Our firm view is that far greater analysis and scoping would be necessary before further consideration of extending the functions of the TIO in the manner suggested by the Commission. Any analysis and scoping of the TIO's functions must be done in consultation with the TIO's constituents.

Draft Recommendation 9.5

Communications Alliance does not support the Commission's draft recommendation that a provision should be incorporated in the new national generic consumer law that allows consumer regulators to take representative actions on behalf of consumers, whether or not they are parties.

Communications Alliance supports the submissions of members that current arrangements dealing with representative actions provide adequate recourse.

Draft Recommendation 10.1

Communications Alliance does not support the Commission's draft recommendation to grant consumer regulators additional enforcement powers.

Our members firmly believe that consumer regulators currently have a broad range of appropriate enforcement tools at their disposal and that there is a lack of clear evidence to justify the extension of enforcement powers at this time.

We submit that in the absence of evidence to support such a change, the potential risk of a significant increase in the regulatory burden on industry and subsequent flow-on cost to consumers is unacceptable.



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