

**COMMUNICATIONS
ALLIANCE LTD**



COMMUNICATIONS ALLIANCE SUBMISSION

to the

Department of Broadband, Communications and
the Digital Economy

REVIEW OF THE AUSTRALIAN COMMUNICATIONS
CONSUMER ACTION NETWORK

19 October 2011

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, search engines, 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>.

Executive Summary

Communications Alliance recognises that ACCAN is a young and evolving organisation in a dynamic environment, seeking to execute diverse and demanding tasks on behalf of telecommunications consumers – and that to date it has gone about these tasks with commendable enthusiasm.

We recognise, equally, that the diversity and differing priorities of the constituent members and predecessor organisations to ACCAN means that ACCAN's internal stakeholder management and consultative processes are sometimes arduous and can make it difficult for the organisation to respond rapidly to the many demands upon its resources.

Communications Alliance believes that in such circumstances the current review of ACCAN is timely and useful, and welcomes the opportunity to contribute to the review.

We have sought in this submission to offer constructive criticisms of ACCAN's performance and to look for ways in which its effectiveness can be further improved.

In summary, Communications Alliance suggests that, going forward, ACCAN should endeavour to:

- better define its model for constructive engagement with the telecommunications industry (a process in which industry stands enthusiastically ready to play its part),
- ensure that its treatment of current topics when it communicates with the media is accurate and designed to help consumers,
- ensure that its views are representative of as wide as possible a sub-set of Australian consumers,
- promote consistency in its views and positions – as opposed to agreeing to outcomes and subsequently reversing previously stated views, and
- ensure its research outputs are objective and express views derived from statistically significant sample bases.

1. Background

Communications Alliance and its members welcome the opportunity to offer their comments in response to the Department of Broadband, Communications and the Digital Economy (DBCDE) Review of the Australian Communications Consumer Action Network (ACCAN).

In pursuing its mission of promoting growth and protecting consumer interests in the Australian communications industry, Communications Alliance seeks to constructively engage with and form lasting positive relationships with all relevant stakeholders, including ACCAN, to ensure an adequate understanding and, where possible, addressing of stakeholders' interests and concerns.

Consequently, since ACCAN's establishment in 2009, Communications Alliance has engaged with ACCAN on numerous occasions which offered the possibility of jointly shaping the Australian communications landscape. Those occasions include

- the revision of Codes and Guidelines, e.g. the
 - Telecommunications Consumer Protections (TCP) Code
 - Mobile Premium Services (MPS) Code
 - Emergency Call Services Requirements Code
 - Operational Matrices for Reporting on Accessibility Features for Telephone Equipment (Information Accessibility Guideline)
- the cooperation in working groups and councils that are not Code/Guideline related, e.g. in the
 - NBN Consumer Dialogue and Education Working Group
 - Australian Communications and Media Authority (ACMA) Consumer Consultative Forum (CCF)
- the addressing of issues that affect consumers, e.g. regarding
 - free phone and local rate numbers (FLRN), i.e. the cost of accessing 1800 and 13/1300 services from mobile phones
 - online copyright matters

In addition, individual Communications Alliance members engage with ACCAN in various other areas on an ongoing basis and may choose to submit their own further views to DBCDE regarding this review.

On the basis of the broad range of topics of engagement over the last two years, Communications Alliance submits that the review of ACCAN is timely and useful to further advance the representation of all consumers' interests in the Australian communications environment.

2. ACCAN's challenges and contributions

Communications Alliance appreciates the complexity of representing consumer interests and the resulting issues which ACCAN seeks to resolve, and acknowledges that ACCAN is still a relatively new organisation within the Australian telecommunications landscape, which only has had two years to mature in its current structure and composition.

In this time Communications Alliance and ACCAN have engaged on the basis of goodwill and a collaborative approach on various issues. Communications Alliance acknowledges the contribution that ACCAN and/or its constituents have made to the following Communications Alliance projects:

- the TCP Code revision, specifically the solutions oriented approach taken by ACCAN constituents in the Billing Working Committee and the Complaint Handling Working Committee;
- the Emergency Call Services Requirements Code revision which benefited from the expertise and measured approach of ACCAN staff; and
- the Information Accessibility Guideline revision which also received valuable input from ACCAN staff.

Communications Alliance and individual industry members have also appreciated and happily accepted invitations from ACCAN to speak at several occasions, e.g. the *Reconnecting the Customer* Summit in August 2011 and the ACCAN National Conference in September 2011.

3. Review on the basis of the Terms of Reference

As an industry organisation Communications Alliance feels that it can only provide relevant comments to selected Terms of Reference (TOR) of the DBCDE review. Where those comments pertain to more than one TOR, they have been summarised under a more general heading and an indication of the associated TOR has been given in brackets.

3.1 ACCAN's working relationships with key internal and external stakeholders (TOR 1c):

Although industry has experienced constructive engagement with ACCAN (see above), Communications Alliance submits that ACCAN's model for engagement with industry still does not appear to be clearly defined which has allowed for inconsistency in the conduct of its staff and implementation of its policies. There has been no formal indication by ACCAN on how it intends to engage with industry bodies such as Communications Alliance or individual members other than recognition in the Strategic Plan that "*building constructive relationships with [...] industry [...] is critical to achieving our vision.*"¹ This lack of a defined industry engagement model relates to the resolution of already existing consumer issues as well as to the discussion and mitigation of potential future consumer issues that may result from the development of new technologies, products and services.

Interaction with industry often takes the form of confrontational campaigning when a more collaborative approach that takes into account the supply side of communications would be likely to yield a more efficient and effective result. This focus on campaigning also becomes apparent from the mission statement in ACCAN's Strategic Plan and their website which not only lists "Campaigns" (with substantial content) as one of the major sub-categories for visitors to click on but also states that "*As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.*"² This often confrontational attitude is equally reflected in the CEO Report in the ACCAN Annual Report 2009-2010 where it reads "*It's been a thoroughly constructive year for ACCAN and we remain, as always, ready, willing and able to work with anyone who wants to enhance consumer welfare, but equally ACCAN is also ready, willing and able to work against anyone who doesn't.*"³

¹ "ACCAN Strategic Plan 2010-2015" (accessed at http://accan.org.au/index.php?option=com_content&view=article&id=30&Itemid=70 on 17.10.2011)

² "About us" on the ACCAN website (accessed at http://accan.org.au/index.php?option=com_content&view=article&id=1&Itemid=3 on 11.10.2011)

³ p.7 ACCAN Annual Report 2009-2010

For example, campaigns, such as 'Number Woman' and the FLRN 'Super Complaint', have been inappropriately targeted, omitted any attempt to engage constructively with industry or gather consensus for the proposed policy change. While the 'Number Woman' campaign has been strong on populism, it has also leveraged points that are factually inaccurate and has unfairly maligned the industry – resulting in baseless and damaging headlines suggesting that the industry has engaged in “rorts”, “scams”, “double-dipping” and the like. The campaign has been conducted in a manner contradictory to ACCAN's stated values to:

- *“Act with courage, integrity and honesty.*
- *Operate efficiently, effectively and ethically*
- *Recognise that building constructive relationships with members, our community, industry, regulators, and government is critical to achieving our vision”;*

and its stated goal to *“Engage key external stakeholders to form mutually beneficial partnerships”*.⁴ Prior engagement with industry may have assisted in providing accurate information on the relevant technical and commercial arrangements involved in the FLRN space and would have helped ACCAN and the public at large to better understand the issues at hand on both sides.

This general lack of consultation with major stakeholder groups is a significant concern for Communications Alliance and its members. Industry devotes considerable time and resources to engaging with stakeholders – particularly consumer groups – in a responsible manner and believes that better outcomes will accrue if ACCAN reciprocated in this regard.

Communications Alliance also submits that at times a lack of commitment to productive and solutions-oriented dealings with industry negatively affects interactions between ACCAN and the industry. In this context industry notes that the Statement of Intent signed by all parties on the TCP Code revision Steering Group (of which the ACCAN CEO is part) has not resulted in the agreed *“balanced and fair manner”* of consideration of issues in which *“no single stakeholder is likely to achieve every aspect of each outcome they seek from the Review”* and which requires *“a spirit of reasonable compromise [...] to ensure a successful overall outcome”*.⁵

While the working processes that require engagement between industry and ACCAN can be productive and compromises may be reached, industry submits that the subsequent lack of commitment to an agreed (and minuted) solution is both frustrating and disappointing and serves only to call into question ACCAN's credibility as a constructive stakeholder.

This was most recently evident during discussions on a proposed compliance framework as part of the MPS Code revision. Following agreement (recorded in the approved minutes of the relevant meeting) by all Working Committee members on a formal position on MPS compliance reporting for the public consultation draft of the Code, ACCAN, who is represented on the Committee, subsequently criticised the proposed compliance model both in the Working Committee and public fora. Following discussions at a Working Committee level, ACCAN re-confirmed its support for the draft compliance model, only to again question its validity in its public comment submission. ACCAN's submission also introduced new issues which had not previously been raised in more than 20 previous meetings of the Working Committee. The lack of commitment to a previous agreement was also highlighted by ACCAN's consent to supply one consumer representative per TCP Code

⁴ “ACCAN Strategic Plan 2010-2015” (accessed at http://accan.org.au/index.php?option=com_content&view=article&id=30&Itemid=70 on 17.10.2011)

⁵ Statement of Intent for the TCP Code revision, signed by ACCAN (CEO Allan Asher) on 29.06.2010.

revision Working Committee which was later withdrawn and equal representation (i.e. three consumer representatives) was demanded.

Similarly, industry feels that the use of lurid and inflammatory language and the labelling of the telecommunications industry as "*Australia's most hated*"⁶ in ACCAN media releases is not conducive either to the establishment or maintenance of good working relationships designed to foster mutual understanding, and to the development of solutions to perceived or existing problems. Industry was also more than disappointed to read "*We encourage all consumers to bypass Internal Dispute Resolution (because telco IDR is so hopeless)*"⁷ in ACCAN's Member Survey "*Talking Back*". This statement not only expressly contradicts the then TIO's own views of being an "*office of last resort*" but it is also highly unprofessional in its deliberately aggressive nature and chosen wording.

Communications Alliance and its members are keen to continue to build on the positive aspect of their engagement with ACCAN staff and members. In order for this to continue, Communications Alliance and its members adhere to the agreed mode of engagement so that a relationship of trust and open communication can progress.

3.2 ACCAN's representation of consumers (TOR 1a, 1d, 3c and 4d):

Communications Alliance is not in a position to generally comment on the effectiveness or quality of representation of the needs of Aboriginal and Torres Strait Islanders, low income consumers, people with disabilities, people from culturally and linguistically-diverse backgrounds, youth, seniors, women, small businesses and regional and remote consumers.

Industry, however, would like to highlight the narrowness of ACCAN's representative focus which appears to not include the 'average' consumer who is not part of the groups listed above. With very few exceptions, ACCAN's membership base does not appear to include consumer groups that would represent the vast majority of Australians. Rather its constituency appears to favour disadvantaged consumers whose requirements can often be complex in nature. ACCAN's agenda in its forums and events – including the ACCAN *Reconnecting the Customer* Summit in August 2011 – seems to be routinely driven by these smaller (which is not to be misinterpreted as meaning unimportant) consumer groups. This skewed representation may well lead to outcomes which would not necessarily reflect the requirements and wishes of 'average' consumers who would naturally have to bear the additional costs to consumers which would result if these more complex solutions were to be implemented by industry.

Communications Alliance also notes that the formation of ACCAN and the resulting sub-summation of numerous individual consumer organisations carry with it the danger of decreased diversity of opinion to the extent that those organisations merely subscribe to an ACCAN view or submission. Communications Alliance recognises the difficulties in balancing these two competing priorities and feels that ACCAN would benefit in calling out which particular consumer groups it is representing on a given issue.

3.3 ACCAN's strategic policy direction (TOR 2):

ACCAN appears to have two conflicting aims: Firstly, to be at the 'negotiating table' with Communications Alliance and its industry members within the current communications regulatory framework; and secondly, campaigning against the regulatory framework altogether.

⁶ ACCAN press release "*Record complaints spell the end of an era for Australia's most-hated industry*", 09.05.2011 (accessed at http://accan.org.au/index.php?option=com_content&view=article&id=310:record-complaints-spell-the-end-of-an-era-for-australias-most-hated-industry-&catid=107:your-rights&Itemid=237 on 11.10.2011)

⁷ p.7 ACCAN Members Survey "*Talking Back*", May 2010

It appears that the aforementioned campaigning reflects ACCAN's interpretation of its mission – an interpretation which industry would find regrettable.

In this context, industry takes ACCAN's repeated public statements on the inability of self-regulatory Codes to effectively address most of consumers' issues⁸ on notice with concern. Industry may be inclined to question – also in light of the partly lacking commitment to agreed outcomes and compromise in the development of consumer Codes discussed above – the effectiveness of the current Code revision model as practiced in the revision of consumer Codes. Communications Alliance would much prefer it be able to continue using the current regulatory framework to best effect – with ACCAN as an important consumer voice forming part of this process – without the same organisation undermining industry's measures to improve consumer experience.

3.4 ACCAN's coherency and consideration of relevant sectors and positions when advocating policy positions (TOR 3a):

As previously mentioned, Communications Alliance has sometimes been disappointed with the coherence of ACCAN positions when viewed over time (e.g. MPS Code compliance mechanism agreement, TCP Code Statement of Intent, number of consumer representatives) and when put into context with other inconsistent requests. For example, ACCAN and/or their constituents espouse that access to telecommunications services are a consumer right and advocate a generally increased level of protection of privacy and access to personal information, but during the revision of the TCP Code ACCAN and/or their constituents put forward the need for increased protection for certain groups of consumers, i.e. ACCAN and/or their constituents advocated suppliers check more personal information, including Centrelink information, to assess whether or not to supply a service to a consumer. This approach would have resulted in suppliers accessing much more personal information than is required today (at an increased cost to all consumers).

Similarly, ACCAN's position on the use and usefulness of the internal dispute resolution schemes is not quite clear to industry. The ACCAN Members Survey "*Talking Back*" states that "*ACCAN members were of the view that it's not just the calls going to the TIO that counted, it's the ones that were being resolved satisfactorily that also need to be measured.*"⁹. Yet the same survey also explicitly encourages all consumers to bypass the telecommunications suppliers' internal dispute resolution and to directly complain to the TIO.

Equally concerning and also addressed previously is the dogmatic approach adopted by ACCAN when discussing positions of contention, often without any consideration to the relevant industry position or factual evidence. For example, industry repeatedly provided detailed explanations with regards to the current impossibility (and future associated costs) of real-time billing and, consequently, the feasibility of some of the proposed expenditure notification tools. Those explanations have not been met in a constructive, solutions-oriented manner but were discarded with insistence on the original position.

3.5 ACCAN's use of robust evidence derived from relevant and rigorous research when advocating policy positions (TOR 3b):

As the ACCAN funding deed describes one of the overarching objectives of ACCAN is to conduct research into the social, economic, environmental and/or technological implications of developments relating to telecommunications.

⁸ e.g. ACCAN press release "*Industry's tinkering with voluntary Code won't fix customers' woes*" on 26.07.2011 (accessed at http://accan.org.au/index.php?option=com_content&view=article&id=349:industrys-tinkering-with-voluntary-code-wont-fix-customers-woes&catid=107:your-rights&Itemid=237 on 11.1.2011)

⁹ p.14 ACCAN Members Survey "*Talking Back*", May 2010

It is, therefore, of great concern to Communications Alliance that the research conducted or commissioned by ACCAN often falls short of reasonable expectations of representativeness, relevance and/or objectivity. For example:

- (Often over-emotionalised) case studies from smaller consumer groups are used to create the impression that the issues portrayed are representative of the majority of Australian consumers, e.g.
 - In the research project “*Seeking Straight Answers: Consumer Decision Making in Telecommunications*” 22 participants in the market for a new smart phone and service document their impressions by means of an auto-ethnographic method, i.e. “*participant recorded video, case studies, and extended interviews [were used] to provide richness to the “stories” of consumers.*”¹⁰ While the use of auto-ethnography in research in itself is controversial, it is even more important to highlight that at least 4 (18%) of participants came from small consumer groups such as the visually impaired (2) and refugees (2). This bias combined with the very small sample size of the research project ought to be adequately considered when publicly drawing conclusions regarding general consumer behaviour.
- Improper extrapolation from very small sample sizes and/or poorly chosen samples, e.g.
 - From the research project “*Seeking Straight Answers: Consumer Decision Making in Telecommunications*”, see above.
 - The paper “*Consumers First: Smart Regulation for Digital Australia*”¹¹ uses only one case study, i.e. of the Financial Services Authority (FSA), to underpin the authors’ endorsement of ‘principles based regulation’. Importantly, the paper mentions but nevertheless appears to fail to take into account that the FSA was subsequently disbanded.
 - While the ACCAN Members Survey “*Talking Back*” does not claim to be statistically representative, it asserts that that the respondents broadly represent Australian consumers¹² – a statement industry would like to question given the aforementioned narrowness of ACCAN’s representation. The use of this survey, which only attracted 45 respondents (with sample sizes for several individual questions of only around 20), in shaping ACCAN’s policy and campaigns is, therefore, even more concerning.
- Research displays signs of subjectivity and is heavily influenced by leading questions to research participants, e.g.
 - In the Youth Advocates Project which ACCAN runs with the Brotherhood of St Lorraine, the following questions are used for an online survey (extract):
 - “*Should mobile companies make their service charges clearer, so you know exactly how much you’re paying for each call, SMS or MB of data?*”

¹⁰ p.26, Centre for Sustainable and Responsible Organisations (CSaRO), Deakin University and the Australian Communications Consumer Action Network (ACCAN), “*Seeking Straight Answers: Consumer Decision Making in Telecommunications*”, September 2011

¹¹ Fraser, M and Barnes, S, Communications Law Centre (CLC) 2010. “*Consumers First: Smart Regulation for Digital Australia*”, Australian Communications Consumer Action Network (ACCAN)

¹² p.3 ACCAN Members Survey “*Talking Back*”, May 2010

- *“Do you believe mobile service providers should stop hiding the terms and conditions in the fine print and be more upfront about the costs?”*
- *“Given the fact that ‘freephone’ numbers are genuinely free to call from mobiles in USA, Germany, Italy, Spain and Holland, do you think that they should be free in Australia too?”*
- *“Do you think mobile companies should do more to help stop young people running up big bills on their mobiles?”¹³*
- In the ACCAN Members Survey *“Talking Back”*, the survey questions are partly equally leading, e.g.:
 - *“Do you think a compensation payment for consumers affected by bad customer service would be fair?”¹⁴*
 - *“Would you support a customer service standard that required telcos to publicly report against a set of performance measures? (For example: waiting on hold time, number of complaints received and resolved internally.)”¹⁵*

Industry also regrets the often unqualified presentation of figures by ACCAN in press releases and other media, e.g.

- The statement *“Other recommendations include a requirement that telcos publicise the fact that the TIO is able to resolve problems between telcos and customers by the inclusion of TIO contact details on telcos’ websites and customers’ billing information. Galaxy research undertaken by ACCAN last year found just 7% of consumers who have a dispute with a telco go to the Ombudsman for resolution.”¹⁶* incorrectly implies that the fact that only 7% of consumers with a dispute turned to the TIO ought to mean that a greater focus on TIO details in consumer communications was desirable. It neglects the likely possibility that the vast majority of consumers (be they satisfied or dissatisfied with the suppliers internal resolution) did not see the necessity to complain to the TIO.
- The statement *“The report found close to 60% of people had exceeded that cap in the past 12 months.”¹⁷* is used to imply that the majority of consumers involuntarily or unknowingly exceed their cap.
- Misrepresentation of the numbers of complaints to the TIO relating to Mobile Premium Services – ACCAN’s public comment submission to the MPS Code stated that *“in 2010 there were 3,325 possible and confirmed MPS Code breaches”¹⁸* relating to unrequested messages, quoting the TIO’s 2009-2010 Annual Report. Yet this same report clearly notes that during the 2009-2010 reporting period, the TIO recorded only 7 Confirmed Breaches of the MPS Code in total, noting that the TIO only records complaints registered against Carriage Service Providers. By seeking

¹³ *Mobile Matters: the Youth Advocates Project Survey* (accessed at http://accan.org.au/index.php?option=com_bfsurvey_pro&view=onepage&catid=153&Itemid=347 on 11.10.2011)

¹⁴ p.10 ACCAN Members Survey *“Talking Back”*, May 2010

¹⁵ p.12 ACCAN Members Survey *“Talking Back”*, May 2010

¹⁶ ACCAN press release *“Telco ombudsman must hit telcos’ hip pockets to encourage real change”* on 05.04.2011 (accessed at http://accan.org.au/index.php?option=com_content&view=article&id=296:telco-ombudsman-must-hit-telcos-hip-pockets-to-encourage-real-change&catid=107:your-rights&Itemid=237 on 11.10.2011)

¹⁷ ACCAN press release *“ACCAN report highlights problems with mobile phone “caps”* on 27.05.2010 (accessed at http://accan.org.au/index.php?option=com_content&view=article&id=158:acma-report-highlights-problems-with-mobile-phone-qcapsq&catid=105:phones&Itemid=232 on 11.10.2011)

¹⁸ p.3 of the ACCAN submission to the MPS Code revision 2010/2011 dated 13.10.2011

only to quote the larger number and not to include the actual number of Confirmed Breaches, ACCAN has represented complaints relating to MPS both inaccurately and negatively, undermining the clear progress that has been made in relation to complaints in this particular sector.

3.6 ACCAN's professional development and financial management (TOR 5b and 5d):

Communications Alliance does not have sufficient information to comment in greater detail on ACCAN's financial arrangements, management or administrative procedures. Nevertheless, industry would like to make several observations relating to the organisation of ACCAN:

- Industry questions whether the establishment of 'Number Woman' constitutes an efficient investment and assists in creating a perception of ACCAN as a professional peak consumer body with the Australian public.
- ACCAN employs a significant number of staff (currently 17 in total). However, industry experiences limited availability of ACCAN staff for meetings, revisions of consumer Codes/Guidelines and/or potential future engagements.
 - For example, it took Communications Alliance more than two and a half months to obtain names of consumer representatives to participate in the Working Committees of the TCP Code revision. It is also unclear why only 2 out of a total of 11 consumer representatives form part of ACCAN staff.
 - In parts, Communications Alliance also experienced significant difficulties to ensure ACCAN staff were available at agreed meeting times for the MPS Code revision Working Committee, with participation at meetings often being cancelled at very little notice and/or with delegates without sufficient decision making authority being sent as a replacement.
 - Similarly, industry was bewildered by the initial decline of industry's invitation to ACCAN to participate in the Information Accessibility Guideline revision.
 - In a similar manner, industry feels that ACCAN's expressed reluctance to commit to participate in the board of the newly to be established compliance body, Communications Compliance, is regrettable and not to be explained through lack of resources.



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