

COMMUNICATIONS  
ALLIANCE LTD



SENATE STANDING COMMITTEE ON ENVIRONMENT  
AND COMMUNICATIONS INQUIRY INTO  
TELECOMMUNICATIONS LEGISLATION AMENDMENT  
(CONSUMER PROTECTION) BILL 2013

COMMUNICATIONS ALLIANCE SUBMISSION  
MAY 2013

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## INTRODUCTION

Communications Alliance is pleased to have the opportunity to provide this submission in response to the Senate Standing Committee on Environment and Communications inquiry into the Telecommunications Legislation Amendment (Consumer Protection) Bill.

Communications Alliance is supportive of the proposed amendments, particularly the amendments which allow for the variation of industry Codes of Practice. These amendments will enhance and strengthen the telecommunications self-regulatory framework. Communications Alliance considers that the ability to vary Codes will:

- allow industry's self-regulatory framework to be more responsive to changing consumer priorities, industry circumstances and technologies;
- allow industry to amend Code provisions that may be ambiguous or confusing;
- correct minor editorial issues without the need to undertake wide public consultation; and;
- allow the inclusion of additional consumer protections within Codes as may become necessary.

### 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>.

## **SECTION 1 – Telecommunications Act 1997**

### **1.1 Require Code Developers to Publish on their websites**

Communications Alliance supports the inclusion of a requirement to publish a draft Code of Practice (**Code**) on its website while consulting with industry and other stakeholders.

Such a requirement ensures an appropriate level of transparency in Code development. It is good practice to provide stakeholders and the general public with ample opportunity to have input into Code development. This has been standard practice for Communications Alliance Code development for some time and helps to ensure that stakeholders have an opportunity to raise issues during the development (or review) process.

Additionally, Communications Alliance has no objection to the requirement to publish, on our website, submissions received during Code development. This measure will provide additional transparency and will allow all interested parties to access and understand issues raised by other stakeholders during the Code development process.

### **1.2 Section 119A of Part 6 – Requirements for Varying Industry Codes**

Communications Alliance supports the inclusion of a new section 119A into Part 6 of the *Telecommunications Act 1974*. This section will provide industry with additional flexibility to vary Codes to ensure continued relevance, particularly during periods of rapid technological and market change.

#### ***Allow Industry to be Responsive to Change***

The telecommunications industry is capable of changing at a rapid pace. As a result, regulations are not always able to easily keep up with changes in technologies or the way in which consumers interact with communications technologies. Issues arise when industry regulation is inflexible and rules promulgated under one set of circumstances lose relevance during periods of market change.

The co-regulatory framework allows industry the greatest flexibility to identify issues and determine workable, practical solutions which industry can implement quickly and effectively. Communications Alliances contends that the ability to vary Codes is a welcome enhancement to the co-regulatory framework.

Allowing industry a greater degree of flexibility to vary industry Codes, whether to revise or include new issues, is a step forward and will ensure that industry Codes remain relevant and current. If an issue is identified, it will be possible for industry to consider and develop practical solutions which can be implemented in a timely manner.

In turn, section 119A(1)(d), which specifies that the ACMA need only consider provisions of the of the Code affected by the variation, will allow the process to be streamlined considerably.

#### ***Allow industry to amend drafting that has resulted in unintended consequences***

Industry invests a significant amount of resources and time during the drafting of Codes. While Codes are drafted in good faith, it is sometimes the case that when industry implements Code requirements, issues with the way a Code operates in practice are exposed. That is, the intended meaning of a clause may not work in practice. Drafting may

be unintentionally ambiguous and cause confusion to industry with regard to the way it should be implemented.

The ability to vary clauses to reflect the intended meaning or to rectify any ambiguity would be a welcome facility for industry. Rather than having to revise an entire Code, industry would be able to revise specific clauses where there may be concern or confusion.

***Waiving the Requirement to Consult with Industry and Members of the Public if the Draft Variation is Minor***

It is not uncommon that minor issues come to light as industry starts working with Codes during their implementation period. For example, there may be spelling mistakes or other errors of a minor editorial manner. These minor errors, if corrected, would not change the meaning or obligations on industry in any way.

Varying Codes to correct minor inaccuracies or errors would not have any generate consumer detriment or alter the community safeguards as provided for by the Code. As such, it will allow these types of errors to be corrected in a way which would not unnecessarily use resources of industry, regulators, Government departments and consumer groups.

***Ability to include additional consumer protections***

From time to time issues may arise in which additional consumer protections need to be captured and reflected by industry Codes. The amendments to allow industry to vary Codes would have the added benefit of allowing the addition of relevant consumer protections to existing Codes without having to wait until a major revision is triggered.

### **1.3 Extend the Application of the Reimbursement Scheme**

Communications Alliance is supportive of the amendment to the Reimbursement Scheme in Division 6A of Part 6 of the *Telecommunications Act 1974*.

It is reasonable to expect that industry bodies will be reimbursed for the costs associated with the variation of industry Codes. Given that the changes to allow the variation of Codes is anticipated to be minor issues, the costs associated should be significantly less than that of a comprehensive revision.



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