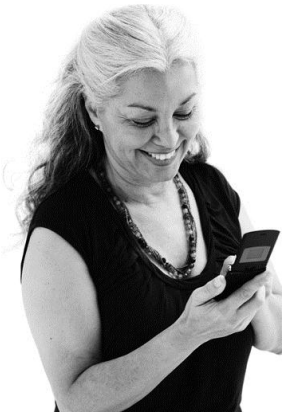
Submission No 122

Inquiry into potential reforms of National Security Legislation

Organisation: Australian Communications Consumer Action Network

Inquiry into potential reforms of national security legislation

Submission by the Australian Communications Consumer Action Network to the Parliamentary Joint Committee on Intelligence and Security



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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

Executive summary

As the peak consumer organisation in the telecommunications sector, ACCAN's comments relate to issues which may have a direct impact on affordable and accessible telecommunications services.

Our submission is divided into two parts:

1. Comments on Discussion Paper. ACCAN supports modernising the Industry assistance framework and also calls for an evaluation of the cost to consumers of imposing additional security and resilience obligations on the industry.

2. *Telecommunications (Interception and Access) Act* and people with disability. ACCAN recommends amending the *Telecommunications (Interception and Access) Act 1979* to remove unintended obstacles to web-based captioned telephony for Australians with a hearing impairment.

Comments on Discussion Paper

B. – Proposals the Government is considering.

B.9. Modernising the Industry assistance framework

In response to the proposal for Modernising the Industry assistance framework in the *Telecommunications Interception and Access Act (1979)* (TIA Act), ACCAN supports the three proposals outlined in the discussion paper.

The provision of clear and consistent industry guidelines will provide certainty for both business and consumers. The right to be informed is a fundamental consumer right and clear guidelines will allow consumers to understand what data is being retrieved and stored by their service provider.

We support the expansion of the Act to include all telecommunications service providers. We understand that the changes in the availability of technologies and our use of telecommunications is fundamentally different from the standard telephone service that underpins the current TIA Act.

The three-tiered approach recommended in the discussion paper will help mitigate onerous compliance costs on small and new-entry providers, allowing for the continuance of increased competition in the sector. Any legislation which hinders competition or encourages a closed market will lessen consumer choice and potentially reduce availability of accessible and affordable services.

C.– Matters on which the Government is seeking the Committee's views:

15. Modernising the industry assistance framework - (TIA Act)

16. Amending the *Telecommunications Act* 1997 to address security and resilience risks posed to the telecommunications sector.

In our consultation with telecommunications providers and Communications Alliance, the peak telecommunications industry body, we understand that there has not been a thorough cost-benefit analysis of the proposed changes and their flow-on effects on consumers. Industry has indicated that while the cost for storage and retrieval of customer data has fallen, the cost for storage and retrieval of new, additional data is high.

As indicated in the discussion paper and recommended in the Blunn Review[1], service providers need to be able to recover their reasonable costs. Costs incurred in meeting additional obligations would, it is argued, likely be passed on to consumers in the form of higher prices.

ACCAN therefore has some concern about whether the proposals presented for comment in the discussion paper fully take into account these consequences for consumers. We would accordingly recommend that an analysis be undertaken of the cost to consumers. The results from such an analysis should be made publicly available and further public consultation should be undertaken.

Telecommunications (Interception and Access) Act and people with disability

Background

Many Australians with disability require technical assistance to make and receive phone calls. For this reason, the Australian Government collects levies from eligible telecommunications companies to fund the National Relay Service (NRS)[2], which enables people who are Deaf, hearing-impaired or speech-impaired to make and receive calls via a third party known as a relay officer. A range of technologies are used to make or receive NRS calls.

Currently, users of the NRS are not affected by the operation of the TIA Act. However, Australians with disability also have access to other relay services which do not currently form part of the NRS.

[1] Blunn, A.S. 2005. "Review of the regulation of access to communications', accessed 2 August 2012. Available from: http://www.ag.gov.au/Publications/Pages/BlunnreportofthereviewoftheregulationofaccesstocommunicationsAugust2005.aspx

[2] NRS, 2012. 'Stay in Touch', last accessed 25 July 2012; www.relayservice.com.au

For example, ACCAN is aware of two non-NRS relay services currently operating in Australia, both provided by not-for-profit organisation Australian Communication Exchange (ACE) on a trial basis. As with NRS services, these relay services require the use of a relay officer.

People using one of these services – known as 'captioned telephony' or CapTel[3] – are being severely hindered by the TIA Act.

Captioned telephony

Captioned telephony is used by people with hearing impairment who use their own speech on the telephone. It allows the hearing-impaired person to both listen to the other party's speech (using their residual hearing) and read what the other person says on a screen – the other person's words having been 're-spoken' by the relay officer using speech recognition software to translate the spoken words into text. Captioned telephony is particularly popular and useful for older people with acquired hearing loss[4].

Captioned telephony can be accessed using two types of technology:

- a specialised landline handset with a screen, or
- a regular handset plus another device with an internet connection, where the service becomes known as web-based captioned telephony, or by a proprietary name, WebCapTel[5].

Web-based caption telephony and the TIA Act

Unfortunately for Australians with hearing impairment, web-based captioned telephony (but not handset-based captioned telephony) appears to be in contravention of the TIA Act.

ACCAN understands that for this reason, ACE has discontinued the trial of web-based captioned telephony and is now only providing the handset-based form of captioned telephony.

ACCAN has been advised by ACE that the reason that web-based captioned telephony contravenes the TIA Act is due to the process of setting up the call and the resultant timing of the relaying process. The problem is explained below.

Handset-based captioned telephony and current NRS call types

In handset-based captioned telephony, the hearing-impaired person initiates a call by dialling the outbound party's number from a special handset which automatically 'dials in' the relay officer as well.

[3] Australian Communication Exchange, 2012. 'Captioned telephone trial', last accessed 18 July 2012; http://www.aceinfo.net.au/index.php?option=com_content&view=article&id=6&Itemid=17

[4] ACCAN, September 2011. 'Inclusive Communications', pp 31-33 and 61-68, last accessed 27 July 2012; http://accan.org.au/index.php?option=com_content&view=article&id=361:review-of-access-to-telecommunication-services-by-people-with-disability-older-australians-and-people-experiencing-illness&catid=142:access-for-all&Itemid=178

[5] For a short video showing an overseas example of this service, see: Sprint, 7 March 2012. 'Sprint WebCapTel', last accessed 25 July 2012; http://www.youtube.com/watch?v=HBFABDquq1g

This results in the hearing-impaired person being party to the other party's speech very slightly in advance of when the relay officer hears the other party's speech and so this does not fall within the definition of 'interception' in the TIA Act. It is therefore compliant with the current Act. This is also the case for current NRS calls types.

Web-based captioned telephony

However, in the case of web-based captioned telephony, the hearing-impaired person initiates a call by entering their own phone number as well as the other party's number on a particular website. The relay officer 'dials in' the hearing-impaired party and then also the other party in what is effectively a conference call.

This results in the relay officer hearing the other party's speech slightly before the hearing-impaired person does.

Sub-section 7 (1) of the TIA Act states that "..a person shall not:

(a) intercept;
(b) authorize, suffer or permit another person to intercept; or
(c) do any act or thing that will enable him or her or another person to intercept;

a communication passing over a telecommunications system."[6]

Section 63 of the Act states that "..a person shall not...communicate to another person...lawfully intercepted information or information obtained by intercepting a communication in contravention of subsection 7(1)"[7]

ACE has advised ACCAN that it is the reversal of the order of the call connections that creates the contravention of the Act. The relay officer is effectively establishing the call with the other party, and therefore that party's speech is heard by the relay officer *before* it is conveyed to the hearing-impaired person who initiated the call.

Detriment to people with disability

ACCAN believes this unintended effect of the TIA Act disadvantages hearing-impaired people who:

- Have not joined up to ACE's trial of handset-based captioned telephony and therefore do not have access to a CapTel handset
- Cannot afford to purchase a CapTel handset (currently provided free by ACE but likely to require purchase in the future; as a guide, a CapTel handset costs US$500 to US$600 in the United States)
- Need to use captioned telephony in non-landline modes (such as with a mobile phone)
- Prefer to use a mainstream (non-disability) model of phone of their own choosing
- Prefer to independently place the call to the outbound party

[6] *Telecommunications (Interception and Access) Act 1979* , Registered 3 April, 2012; p61; http://www.comlaw.gov.au/Details/C2012C00381
[7] *Telecommunications (Interception and Access) Act 1979* , Registered 3 April, 2012; p115; http://www.comlaw.gov.au/Details/C2012C00381

- Need fast access to captioned telephony (for example, have recently lost their hearing, or have not realised that they cannot access, say, phone banking without recourse to a relay service).

Future relay services

The case for removing this loophole is currently strong and will only grow stronger. Other relay services may arise in the future, due to changes in technology, demography or funding. These may or may not form part of the NRS. Other organisations may wish to provide relay services in the future, either for free or on a fee-for-service basis, as happens in other countries, such as in Brazil[8] and Japan[9].

New forms of technology are constantly being developed. Some of these may lead to simpler, easier access to telecommunications for people with disability. However, there is a risk that these services will not develop nor be made available in Australia due to concerns that they contravene the TIA Act.

This would disadvantage an already disadvantaged group, condemning them, as people with disability often are, to outmoded forms of communications.

Summary

Given that one in six Australians has a hearing loss and that with the ageing of the population, hearing loss is projected to increase to one in every four Australians by 2050[10], relay services, including WebCapTel, are essential communication tools. ACCAN has argued this type of service should be part of the NRS.

Removing the legal obstacle described above is important in enabling hearing-impaired people to exercise their right to access functional equivalents to the Standard Telephone Service[11].

ACCAN therefore makes the following recommendation:

That the TIA Act is amended so that any current and future telecommunications relay provider/s (NRS or otherwise) can provide any suite of relay services to people with disability without contravening the Act.

[8] Viavel Brasil, 2012, last accessed 18 July 2012; http://www.brasilviable.com.br
[9] Japan Signers Service, 2012, last accessed 18 July 2012; http://www.japan-jss.com/
[10] Access Economics, February 2006. 'Listen Hear! The economic impact and cost of hearing loss in Australia', last accessed 18 July 2012; http://www.audiology.asn.au/pdf/listenhearfinal.pdf
[11] The Standard Telephone Service is defined as "a telephone service fit for the purpose of voice telephony, or if voice telephony is impractical for a person with a disability, a form of communication that is equivalent to voice telephony"; Section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, last accessed 25 July 2012; http://www.comlaw.gov.au/Series/C2004A00441