

**SUBMISSION TO THE SENATE ENVIRONMENT, COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS COMMITTEE**

FROM THE AUSTRALIAN COMMUNICATIONS INDUSTRY FORUM

**Inquiry into the performance of the
Australian telecommunications regulatory regime**

Introduction

The Australian Communications Industry Forum (ACIF) welcomes the opportunity to provide this submission to the Senate Inquiry into the performance of the Australian telecommunications regulatory regime.

ACIF's submission is confined to those terms of reference that seek comment on consumer protection safeguards in the current regulatory regime. ACIF's charter does not include competitive issues, except to the extent that it liaises with the Australian Competition and Consumer Commission (ACCC) to ensure its outcomes (in particular, industry Codes) are competitively neutral.

ACIF is a member-funded organisation established in 1997 to lead and facilitate communications self-regulation in the interests of both industry and consumers. Its vision is an efficient and competitive communications environment for the benefit of all industry participants, developed and fostered through self-regulatory processes.

Australia leads the world in successful telecommunications self-regulation, enabling a dynamic industry to develop innovative and effective self-regulatory solutions for the benefit of Australian industry and consumers.

ACIF provides a neutral forum in which all participants can work together to foster an efficient environment through self-regulatory processes, in particular through the development of:

- Inter-operator arrangements to make competition work
- Consumer protections in the supply of telecommunications services
- Network and customer equipment standards.

In addition to industry Codes and Standards relating to operating, technical and consumer protection issues, ACIF leads the facilitation of emerging industry issues to ensure appropriate and pro-active self-regulatory initiatives.

2. Regulatory policy and framework

Self-regulation is central to the regulatory scheme in the *Telecommunications Act 1997* (the Act). Section 4 of the Act states the regulatory policy of the Act is that telecommunications be regulated in a manner that promotes the greatest practicable use of self-regulation and does not impose undue financial and administrative burdens on the telecommunications industry.

As the body established by the industry in 1997 to develop Codes in accordance with the regulatory policy of the Act, ACIF supports the current regulatory policy and framework in relation to Codes.

ACIF's structure and open and transparent processes maximise both industry input, to ensure practical outcomes that can be implemented across the industry, and consumer input to ensure that adequate consumer protections are adopted in Codes.

All of ACIF's consumer codes are submitted to the Australian Communications Authority (ACA) for registration, as allowed for under the Act. The ACA has powers to accept or reject a Code registration, balancing public interest considerations with ensuring that undue financial and administrative burdens are not placed on industry. The ACA also has ultimate powers of enforcement of registered Codes, making the system a co-regulatory rather than a wholly self-regulatory one.

The regulatory framework also provides an additional safety net through the empowerment of the ACA to make a mandatory industry standard if the Authority considers a code to be deficient.

ACIF's consumer codes also confer jurisdiction on the Telecommunications Industry Ombudsman (TIO), who can make binding rulings to redress complainants adversely affected by Code breaches of up to \$10,000 per complaint under the industry-funded scheme.

ACIF considers that the current framework for Codes set out in the Act strikes an appropriate balance, allowing industry to develop practicable and efficient provisions in consultation with consumer representatives, with the safeguard that a Code can only be registered by the ACA if it provides appropriate community safeguards. The consumer protection provisions in registered Codes are reinforced by the enforcement mechanisms in the legislative framework, through regulatory oversight by the ACA and recourse for individual customers available through the TIO.

ACIF does not recommend any changes to the existing regulatory policy or framework for Codes and Standards.

3. Overview of ACIF Code development processes

There are currently 25 ACIF Codes in operation, demonstrating the industry's responsiveness and commitment to self-regulation through the code development process. Many of these Codes contain consumer protections in areas including billing, credit management, customer transfer, consumer contracts, customer information on prices terms and conditions, and complaint-handling.

ACIF's Code development and operating procedures are open and transparent.

The working sub-committees are open to non-ACIF members and ACIF members alike, which enables people with expertise in particular areas of consumer protection to participate. Each sub-committee comprises both industry and consumer representatives, who have voting entitlements. The ACA, TIO and the ACCC are entitled to be non-voting members of each subcommittee.

ACIF Codes are developed through a consensus decision-making approach. This approach strikes a balance between the need to provide consumer protection and the regulatory policy of the Act requiring that regulation should not impose undue financial and administrative costs on service providers.

All draft Codes and Standards are released for public comment prior to publication to ensure they reflect the needs and concerns of all stakeholders.

All of ACIF's consumer codes are registered with the ACA. In registering a Code the ACA must be satisfied that the code provides appropriate community safeguards but in doing so is guided by the regulatory policy of the Act. That is, the ACA is required to balance the sometimes competing interests involved. The ACA's act of registering all of ACIF's consumer codes demonstrates the Authority's validation of an appropriate balance having been achieved to date through the ACIF Code development processes. Registered codes are enforceable by the ACA across the industry, irrespective of a service provider's signatory status with the Code.

ACIF Codes are publicly reviewed from time to time according to agreed timeframes or earlier in response to industry developments. The Code review processes allow for flexibility and responsiveness in a rapidly changing industry, a key advantage of a self-regulatory regime.

4. ACIF industry facilitation activities

ACIF provides an important forum for industry members to consider the implications of new and emerging technological developments in the telecommunications industry. Through its Next Generations Networks (NGN) project, ACIF has led industry discussion and thinking on future directions from a whole-of-industry perspective.

In particular, ACIF has played a lead role in addressing the challenges presented by the growing popularity and acceptance of Voice over the Internet Protocol (VoIP) as a consumer offering. In December 2004 ACIF hosted a major forum on VoIP that brought together over 80 industry, consumer and regulator representatives together to discuss the best way forward in developing an appropriate regulatory framework. The general industry view is that self-regulation is the best way forward in dealing with the emergence of VoIP.

ACIF has established the Network Services Self-Regulatory Policy Industry Facilitation Group (NSFG) to progress the two key areas identified at the Forum as requiring priority action – the provision of consumer information, and technical work that will be managed through ACIF to ensure interoperability and any-to-any connectivity between VoIP providers in future.

The NSFG has set up three working groups with broad representation from across the industry focusing on Consumer Information, Operations Issues, and Technology and Services.

In April 2005 ACIF released a Fact Sheet for the industry advising VoIP providers of the information they need to provide to their customers considering a VoIP service. This is the first of numerous self-regulatory initiatives in relation to VoIP that ACIF will be progressively rolling out throughout 2005 – to ensure that consumers are protected and that the innovation and development behind technologies such as VoIP are not stifled, ultimately providing greater competition and consumer choice.

5. ACIF response to *Consumer Driven Communications* report

The Committee may be aware that last year the ACA provided funding for a group of consumer representatives to develop a report on strategies for better consumer representation in telecommunications.

The report *Consumer Driven Communications* released in December 2004 itemised a number of perceived deficiencies in the ACIF model of consumer representation and made recommendations to address them.

Following publication of the report, ACIF provided a response to the ACA on factual matters in the report. A copy of ACIF's response is contained at Attachment A for the Committee's information.

ACIF is currently working on a formal response to the comments and recommendations in the paper. It agrees with the paper's premise that the merger of the ACA and the ABA provides an opportunity to introduce new approaches to consumer issues - ACIF is studying the CDC paper's recommendations closely with the view to exploring the opportunities for enhanced consumer participation in the new regulatory environment.

6. Conclusion

ACIF supports the existing regulatory policy and framework for the Australian telecommunications industry in relation to the maximum use of industry self-regulation without undue financial and administrative costs for suppliers.

ACIF's 25 Codes embody industry best-practice across a broad range of operating, technical and consumer protection matters

In particular, ACIF's consumer codes provide significant consumer benefits, having been developed collaboratively by industry and consumer representatives and registered by the ACA, after satisfying the ACA that they provide appropriate community safeguards.

ACIF's activities in facilitating industry solutions, particularly in emerging issues such as NGN and VoIP, demonstrate that self-regulatory responses are flexible and timely in an industry of rapid change.

ACIF considers the existing regulatory policy and framework strike an appropriate balance, enabling industry to develop practicable and efficient Code provisions which provide appropriate consumer protections, achieved through consumer input and supported by the public interest considerations involved in the ACA registration process.

ACIF also believes the existing framework is sufficiently flexible and responsive to enable the development of effective self-regulatory solutions and consumer protections in the future as telecommunications services continue to rapidly evolve.

ACIF thanks the Senate Committee for the opportunity to provide this submission, and would be pleased to appear before the Committee to answer any questions Committee members may have in relation to the submission or ACIF's operations.

7 April 2005

ATTACHMENT A**ACIF Input to and Comments on the report *Consumer Driven Communications: Strategies for Better Representation***

ACIF welcomes the opportunity to provide a contribution the Final Report and Framework Document submitted by the Consumer Driven Communications Committee to the ACA in December 2004.

ACIF is committed to consumer participation in its processes. ACIF welcomes opportunities to review how to achieve effective collaborative work in delivering outcomes in a competitive telecommunications environment which is underpinned by a policy of the maximum use of industry self-regulation.

The following comments do not consider the totality of the Report. In particular, it does not comment on the paper positions relating to the Government policy of self-regulation in the telecommunications industry or recommendations relating to any other agencies.

The comments are directed only to factual matters relating to the Australian Communications Industry Forum (ACIF). The objectives of the comments are to :

- (1) ensure that the factual public record relating to ACIF, its role and its work with consumer representatives is accurate and up to date; and
- (2) address any negative perceptions of ACIF, its role and commitment to consumer participation which may flow from a public record which may be seen to contain some gaps in its fact base.

Final Report: Recommendation**Self-regulation Recommendations**

Recommendation 7: this recommendation does not acknowledge that the majority of the initiatives listed were those instituted by ACIF for the development of the Consumer Contracts Code. Whilst that of itself is not a matter for major concern, it becomes so in the context of the overall theme of the documents, which is that 'the current self-regulatory regime has generally failed..' and 'The ACIF code regime has been a wholly inadequate vehicle for responding to marketplace failures.'¹ In that context, if measures which ACIF has put in place are to be cited by the Report as benchmarks for Code development, then the record should be fair and acknowledge the genesis of those recommended benchmarks.

¹ Framework Document, p 41

Recommendation 39: recommendation 39 relating to reform of the ACIF Consumer Advisory Council (CAC) does not mention that proposals for reform of the CAC were part of the ACIF independent consultants' review in 2004, and that the CAC has its own sub-committee to respond to these proposals. While the omission of itself may not necessarily be a cause for major concern, it becomes so in the context of the positioning of ACIF as a 'failed experiment' for consumer outcomes. The fact that ACIF even has a Consumer Advisory Council should be a matter which is acknowledged as a positive contribution to consumer participation. To the extent that it could do things better, constructive comment is welcome. To the extent that ACIF is indeed taking steps to do things better, that should be acknowledged. The omission to do so allows a negative perception of ACIF to be drawn.

Recommendation 40: neither this recommendation, relating to consumer representation on the ACIF Board and Reference Panels, nor any part of the Framework Document outline the actual and, extensive opportunity for, consumer involvement in ACIF:

- On the ACIF Board, there are currently 3 Directors representing consumer/end-user organizations – CTN, Setel and ATUG.
- Reference Panels: currently have consumer/end-user representatives who are members of ACIF (membership of ACIF is a requirement for membership of Reference Panels)
- Working Committees: membership of ACIF is not a requirement for participation in Working Committees. ACIF advertises the creation of new Working Committees in order to attract representatives from the widest constituencies.
- In addition, ACIF has 2 separate advisory bodies – the CAC and Disability Advisory Body.

Recommendation 41: neither this recommendation, nor the Framework Document, acknowledge the funding which ACIF provides for its consumer representatives. In 2004, the cost to ACIF to fund consumer participation was \$120,000. This does not include the costs of administrative support provided by ACIF to its consumer representatives.

Recommendations 52, 53, 57, 58: these recommendations do not acknowledge the initiatives which ACIF has put in place to address Code compliance issues. ACIF's commitment to driving compliance has been publicly stated on numerous occasions since April 2004. In particular, ACIF has appointed a Compliance Manager with the specific brief of driving compliance and reviewing the Code Administration and Compliance Scheme. Given the overall context of the positioning of ACIF in these public documents, a full and complete record would require that positive initiatives such as this are acknowledged. Constructive Comment on how we could enhance it are always welcome.

Framework Document

Pages 32 and 41: The Framework Document refers to 'process and outcome failures' of ACIF and makes statements such as 'ACIF has, in the view of many consumer representatives, failed to deliver improved consumer outcomes and is regarded as a failed experiment' and 'The ACIF code regime has been a wholly inadequate vehicle for responding to marketplace failures.'

ACIF welcomes input as to how it can do things better to achieve competitive outcomes for consumer benefit. Therefore, in 2004 ACIF engaged independent consultants to review its processes and recommend how they might be improved to deliver better outcomes. This review was a matter of public record and many of those involved in the production of the CDC report were interviewed for their input. The recommendations are being worked through, in collaboration with the ACIF Consumer Advisory Council.

Failure to omit reference to ACIF's review and the work to improve its processes creates an incomplete public record.

It is also worth noting that the ACIF Strategic Plan 2004-2007, which is a public document, includes the requirement to 'Achieve and maintain appropriate and cost-effective consumer input into ACIF processes and activities'.

Statements relating to the failure of ACIF's outcomes are difficult to respond to in the absence of more factual detail. Whilst the Framework Document and the Final Report make such references as 'the current miscellaneous collection of standalone codes'², it is not clear where the outcome failure lies:

- Is it the substance of the codes?: it is unarguable that since 1997, and ACIF's work, there are in place considerable consumer protections in the provision of telecommunications services which were not previously in existence, protections which consumers participated in developing. If the substance of these codes is not adequate, this needs to be detailed.
- Is it the format of the codes?: the code framework has developed as a suite of codes, rather than a single Code. ACIF understands that there have been calls – which are repeated in the Final Report and Framework Document - for a single consumer protection code or Standard. ACIF's Strategic Plan 2004-2007 specifically includes the direction to 'explore the concept of a united/single consumer Industry Code'. Further, to assist in understanding the content of its consumer Codes, ACIF is re-publishing a document which summarises the requirements of the Codes. If this is the outcome failure pointed to, a complete public record requires these initiatives to be included.

² Final Report, recommendation 13

- Is it compliance with Codes?: As already discussed, ACIF is taking initiatives in this regard. If this is the outcome failure, then again a complete public record requires these initiatives to be included.
- Is it enforcement of registered Codes?: enforcement of registered Codes is a legislative function of the ACA. It should be clear for the public record that if it is enforcement issues contributing to statements of 'outcome failure', these are not issues within ACIF's purview.

Page 33: the background offered on the 'contracts issue', on p 33 and footnote 32, stops at a point in time before the development of the Consumer Contracts Code and does not acknowledge the initiatives put in place by ACIF to develop and expedite that Code. A full and complete history should contain the steps actually put in place to develop the Code and recognize that as at the time of release of the CDC documents the Working Committee had largely completed its work and publication of the Code was expected in February 2005.

17 January 2005