



**Australian
Privacy
Foundation**

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Review of Consumer-related Industry Code Processes

Submission to the Department of Broadband Communications and the Digital Economy

May 2009

The Australian Privacy Foundation

The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. Since 1987, the Foundation has led the defence of the right of individuals to control their personal information and to be free of excessive intrusions. The Foundation uses the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed. For further information about the Foundation and the Charter, see www.privacy.org.au

Our involvement in Telecommunications Code Development

The Australian Privacy Foundation has been heavily involved in the development of telecommunications Codes since the mid 1990s. APF participated in many of the ACIF (later CA) Code Working Committees (e.g. on Calling Number Display, Law Enforcement and Emergency Services Assistance, IPND and Participant Monitoring). Our representatives have spent several hundred hours of unpaid volunteer time in code development, alongside or in some cases also representing the Consumers Telecommunications Network (CTN).

Submission

We fully support the CTN submission and its many criticisms of telecommunications code development processes, which reflect our own experience. Looking back over the last decade, the process can only be described as an abject failure. Despite the goodwill with which consumer representatives have entered Code working committees and the higher level ACIF forums (progressively disbanded), these processes have been overwhelmingly biased in favour of industry interests and concerns, and in many cases simply used as delaying tactic to avoid effective regulation. Many of the Codes that have emerged from lengthy processes have not even been signed onto by carriers or carriage service providers. Where they have been registered by ACMA, thereby becoming mandatory, compliance monitoring and enforcement have been minimal.

Since ACIF became the Communications Alliance, even the pretence of a partnership with consumer representative has been stripped away. The Privacy Advisory Group (PAG) on which we were represented has been allowed to die, despite our repeated objections and without adequate explanation, and we understand that the more general Consumer and Disability Councils have also been disbanded. CTN was able to raise privacy concerns for us in the past

through the ACIF Board and Consumer Issues Reference Panel, but CTN's submission explains how even this has not worked.

We reached the conclusion some time ago that the self-regulatory approach embedded in the Telecommunications Act has failed. It is fundamentally broken and cannot be fixed. A new approach is required which elevates the objectives of regulation above an ideological commitment to minimal government intervention, and a naïve belief that the very different interests of business and consumers can always be reconciled by a consensus. Many of the consumer issues that ACIF/CA have attempted to deal with through Codes are simply not amenable to the code development model in the Act.

There can be a more limited but still valuable role for Codes as a flexible way of fleshing out a legislated framework of consumer protection, but code development processes must involve mandated levels of consumer representation to balance industry participation; independent chairs; clear and quicker timelines; mandatory adoption and much better compliance monitoring and enforcement.

The experiment with an industry dominated Code development body (ACIF/CA) has failed and responsibility for code development should in future be brought within ACMA.

We anticipate that the experience of the last decade will inform the processes of the new ACCAN body, but it is unrealistic to expect that the formation of ACCAN can compensate for the weaknesses of the current regulatory model.

To the extent that we are all stuck with the current model, at least in the short term, we support the various suggestions put forward by CTN in its submission for improvements in code development criteria and processes.

We look forward to further consultations about a new and improved regulatory framework for consumer protection in telecommunications.

For further contact on this submission please contact
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Please note that postal correspondence takes some time due to re-direction – our preferred mode of communication is by email, which should be answered without undue delay.