



**Australian
Privacy
Foundation**

email: mail@privacy.org.au

website: www.privacy.org.au

Mid-term review of the Australian Communications Consumer Action Network

Submission to the Department of Broadband,
Communications and the Digital Economy

October 2011

Publication of submissions

We note that we have no objection to the publication of this submission in full.

To further the public interest in transparency of public policy processes, APF strongly supports the position that all submissions to public Inquiries and reviews should be publicly available, except to the extent that a submitter has reasonable grounds for confidentiality for all, or preferably part of, a submission.

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. Further information about the Foundation and the Charter are on our website¹.

We note that APF has been an organisational member of ACCAN since its formation, and has worked with ACCAN staff on some issues, but that the Foundation has received no grants or other funding from ACCAN.

Submission

Below, we give our responses in turn to each of the review's terms of reference:

- 1. The effectiveness of ACCAN in representing and harnessing its constituent bodies and representatives to support and actively participate in the work of the organisation. In particular, consideration will be given to:*

¹ <http://www.privacy.org.au>

- *a. how ACCAN represents and balances 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 business as consumers of telecommunications services, and regional and remote consumers*
- *b. the perception of ACCAN's members on the performance of the organisation including what members find most beneficial about participation in ACCAN*
- *c. the extent to which good working relationships have been fostered between ACCAN and key internal and external stakeholders, and*
- *d. the overall difference that ACCAN has made to consumer representation in the telecommunications sector compared to the situation that existed before ACCAN's establishment.*

APF Submission

APF has been very satisfied by the level of contact and consultation by ACCAN with us as a member organisation and relevant stakeholder. The regular ACCAN News is very comprehensive and timely, and ACCAN also seeks our input to specific projects.

ACCAN has built on the good work and stakeholder liaison of its predecessor, CTN, but has been able to bring an enhanced level of professionalism to its activities.

2. *ACCAN's strategic policy direction. This includes consideration of ACCAN's Strategic Plan 2010–15 and how activities and consumer grants awarded by ACCAN fulfil ACCAN's policy objectives.*

APF Submission

APF welcomed the express inclusion in Goal 3 in ACCAN's Strategic Plan of consumer privacy and security interests. This is particularly important given the high and increasing prominence of privacy and security issues in telecommunications – we cite the well publicised data security breaches involving major telcos in Australia, continued breaches of the Spam and Do Not Call Register Acts, and intense worldwide debate about privacy settings offered by social media businesses such as Facebook, YouTube and Google.

We particularly welcomed ACCAN's support for research in 2010 into privacy complaints handling experience in the telecommunications sector. The report of this research² was a landmark reminder of the unsatisfactory state of regulation, and of the resourcing, processes and priorities of some regulators and complaint handling bodies.

APF is disappointed that ACCAN has not been able to devote more resources to policy work on privacy, the burden of which has fallen back on the all volunteer Foundation and other poorly resourced NGOs such as Councils of Civil Liberties and Electronic Frontiers

² Connolly, C and Vaile, D. *Communications privacy complaints: in search of the right path*, Cyberspace Law and Policy Centre with support of ACCAN (<http://accan.org.au/>) launched 14 Sept 2010, http://cyberlawcentre.org/privacy/ACCAN_Complaints_Report/report.pdf

Australia. ACCAN's predecessor, CTN, was more engaged in privacy policy work than ACCAN has been in its short life.

While we will continue to advocate for privacy policy work to be given greater priority by ACCAN, we understand that it has had to make difficult decisions on how to allocate limited resources. Ideally, ACCAN should receive additional funding to allow it to pursue Goal 3 more actively.

3. *The extent to which the policy positions advocated by ACCAN meet the following criteria:*

- *a. Are coherent and give consideration to relevant community sector, industry and government positions as well as other pertinent environmental factors.*
- *b. Are based on robust evidence that may be derived from research undertaken and commissioned by ACCAN. The relevance and rigour of research will also be examined against this criterion.*
- *c. Are practical and influential in shaping future policy directions. From a consumer perspective, this would include examination of how ACCAN has promoted increased availability, accessibility and affordability of communications services for all Australians. From an industry perspective, this would include examination of how ACCAN has influenced industry practices or self-regulation. From a government perspective, this would include examination of the extent to which ACCAN has effected or improved government policy or regulation.*

APF Submission

APF believes that ACCAN has pursued an evidence based approach to its policy and advocacy work, taking relevant account of the positions of other stakeholders. We emphasise however that we do not think ACCAN itself needs to 'balance' these positions against consumer interests, which must remain the primary focus of ACCAN's work. There are quite enough advocates for business interests with disproportionate resources and influence. ACCAN provides only a modest counterweight to these interests.

We believe that ACCAN has had some success in influencing industry behaviour and government policy in favour of consumer interests, but that this remains an 'uphill struggle' against industry vested interests and government positions that often favour business interests over consumer welfare. We believe it is a mistake to try to pretend that 'win-win' consensus outcomes can always be achieved – there are very real conflicts of interest and ACCAN must remain a strong and vocal advocate for consumer interests.

4. *ACCAN's performance in promoting consumer awareness of telecommunications issues and in being recognised as the peak telecommunications consumer body. In particular:*

- *a. The effectiveness of different communications mediums (for example, print and electronic media) in reaching different target audiences (for example, Australians with disability, culturally diverse Australians and young Australians).*

- *b. The timeliness of alerting consumers to issues. This includes ACCAN's accessibility to journalists in providing media comment on telecommunications consumer issues.*
- *c. Any further identified gaps in ACCAN's promotion of key consumer issues.*
- *d. Stakeholder feedback on the reputation and standing of ACCAN as the peak consumer representative body.*

APF Submission

APF believes that ACCAN has done a good job, with limited resources, in promoting consumer awareness of telecommunications issues and is widely recognised as the peak telecommunications consumer body. This is not to say that much more remains to be done and that even greater awareness and promotion should remain an objective for the future.

We are particularly concerned that ACCAN should play a greater role than it has to date in relation to consumer privacy issues – see our comments above on strategic direction (ToR2).

Recent criticism by the Opposition and some sections of the media of ACCAN for perceived bias in favour of the National Broadband Network (NBN) is, we believe, misplaced. ACCAN, in our view, has taken a position on broadband futures based on its dispassionate analysis of the consumer interest.

5. *The appropriateness and effectiveness of ACCAN's current governance arrangements. This will include examination of:*
 - *a. ACCAN's board structure*
 - *b. recruitment processes and professional development*
 - *c. administration of ACCAN's consumer grants program*
 - *d. financial management*
 - *e. travel arrangements*
 - *f. other administrative functions of ACCAN.*

APF Submission

We have no direct experience of ACCAN's current governance arrangements, other than communications relating to our membership, annual general meetings, voting etc, which have all seemed very professional.

For further information relating to this submission, please contact:

Nigel Waters, Board Member
 Australian Privacy Foundation
board5@privacy.org.au

APF Web site: <http://www.privacy.org.au>

Please note that APF's preferred mode of communication is by email, which should be answered without undue delay. APF does not have an organisational postal address. If postal communication is necessary, please contact the person named above to arrange for a postal address.