



3rd March 2011

Joan Sheedy
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Department of the Prime Minister & Cabinet

by email: Joan.Sheedy@pmc.gov.au

Dear Joan,

Telecommunications Industry and the Credit Reporting Code

Following on from the Ministerial Roundtable on the 10th February, we thought it may assist if we provided you with a brief outline of the concerns our organisations have about the current telecommunication industry codes, and regulation generally in that sector.

As we stated at the Roundtable, we strongly reject any proposal to have more than one Credit Reporting Code for a range of reasons, including confusion and challenges in the development and monitoring of separate codes which in some cases could both apply to the same event. However, we have particular concerns about any suggestion that the telecommunications industry could develop its own code, or rely on current telecommunication industry codes.

Consumer experience suggests that telecommunications industry codes have been ineffectual in delivering an appropriate 'baseline' in consumer protection and compliance culture.

These Codes take significant time and resources to develop, and even once they are complete very few businesses bother to sign up.

Section 106 of the Telecommunications Act (1997) provides that 'compliance with an industry code is voluntary unless ACMA directs a particular participant...to comply' with a registered code'. Most Codes have a maximum of 2-3 signatories - and in some cases none. The keystone consumer protection document, the Telecommunications Consumer Protection Code, has only two signatories.

The Industry body Communications Alliance has a Code Administration and Compliance scheme, however this only applies to Code signatories, and unlike other codes the monitoring body is not independent of industry. Effective Code Compliance Monitoring systems would be similar to that for the Banking and Mutuals Codes, where the code monitoring body is independent of the industry body, and can undertake self-motion investigation. This concept has been advocated by consumer groups for many years now.

These problems are compounded by the approach of the regulator, the Australian Communications and Media Authority (ACMA). For example, ACMA does not, in practice, act upon code-related complaints

statistics provided by the Telecommunications Industry Ombudsman (TIO), even though it has the power to do so.

Concerns about telecommunications regulation, and ACMA, were raised in "Good Practice in Consumer Protection Enforcement", a 2008 report by CHOICE which examined the effectiveness of 12 regulators. Two regulators - ACMA and TGA - were excluded from being ranked against other regulators in the report. The report explained that "Both claim that our model does not suit their system of regulation. They describe that system as based in 'self-regulation or 'co-regulation' and distinguish this from the more enforcement-based models applied by the ACCC, ASIC and the State Offices of Fair Trading."

The CHOICE report continues, "We believe that our analysis shows that in the industries covered by these two regulatory bodies there is a lower level of consumer protection enforcement than in some other areas studied. The problem - as correctly pointed out by both regulators - lies primarily with the model rather than the performance of the regulator per se, although we think that there are areas for improvement even within the sub-optimal framework that has been imposed on them (as there are for all the regulators we reviewed)."

Finally, the problems with regulation are reflected in the level of complaints. The TIO recently reported receiving 87,264 new complaints in the last 6 months of 2010 - a 9% increase on the previous 6 months. This included 19,000 issues relating to the failure of companies to follow through with promises they had already made to resolve complaints - an increase of 23%.

Yours faithfully,

Carolyn Bond

on behalf of:

- Consumer Action Law Centre
- Kat Lane, Consumer Credit Legal Centre (NSW)
- Loretta Kreet, Legal Aid Queensland
- Fiona Guthrie, Australian Financial Counselling and Credit Reform Association

cc: Timothy Pilgrim
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