



**AMTA**

**Australian Mobile  
Telecommunications  
Association**

Submission to the Department of Communications and the Arts

Consumer Representation: Review of Section 593 of the  
*Telecommunications Act 1997*

November 2016

## Background

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see [www.amta.org.au](http://www.amta.org.au).

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups. Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

# 1 Introduction

AMTA and Communications Alliance (the Associations) welcome the opportunity to make comments on the Department of Communications and the Arts (the DoCA) *Consumer representation: Review of section 593 of the Telecommunications Act 1997* (the Review).

## 2 Consumer Representation

### 2.1 Has ACCAN effectively performed the role of representing the interests of consumers in relation to telecommunications?

ACCAN has done a creditable job representing the interests of consumers. The organisation has performed well in advocating on behalf of particular telecommunications users with specific needs and interests.

Since the most recent review, ACCAN has also implemented changes to improve its engagement with industry, for example, holding regular meetings with the Associations and individual industry members, and this has had a positive impact on its ability to represent the interests of consumers.

However, this is not to suggest that further improvements cannot be made. The Associations consider, for example:

- that ACCAN could further improve its engagement with industry and work in a much more collaborative way. Industry would welcome closer dialogue and earlier engagement around issues identified by ACCAN to allow industry to investigate and remedy in a more timely way. The Associations consider that ACCAN should possess valuable insights regarding the needs and behaviours of consumers and that industry could benefit from discussing these in a constructive manner. It is unfortunate that some issues are raised through other fora – such as the ACMA's Consumer Consultative Forum (CCF) – rather than directly with industry in the first instance.

A recent example of this was the issue of Direct Carrier Billing. While there were discussions with several operators regarding new customer safeguards including a new subscription process, ACCAN still chose to raise this issue through the CCF. The Associations' believe that, in the first instance, better engagement between industry and ACCAN could have provided industry with an opportunity to address any issues without the need for further escalation.

- in the past, ACCAN has been criticised for failing to adequately represent mainstream consumers and, rather, focusing on marginal or the special interests of their member organisations. The Associations consider that, although ACCAN is clearly conscious of this

issue, it needs to continue to pay attention to achieving the right balance of mainstream vs special-interest representation. There may be value in considering whether ACCAN needs clearer objectives to direct its operations and strategy.

The Associations note and welcome ACCAN's notice of their second set policy priorities for 2016-2017 in October. While it is still early days for an external party to identify whether ACCAN's 2015-2016 list of priorities has reduced a tendency to make recommendations on issues without prior and substantive engagement or feedback from industry, it is hoped a focus on proactive prioritisation of consumer issues of this nature will increase early engagement with the industry.

A strategic review of ACCAN would benefit from any efforts to identify issues at an embryonic stage. Better targeted research, with inputs from industry members, may help to identify issues in a timely way to inform future priorities for ACCAN.

## 2.2 Does ACCAN effectively engage with a broad range of stakeholders, including industry, government agencies and consumer groups?

The Associations note that there has been a significant improvement in the relationship between industry and ACCAN over time. In its 2011 submission to the mid-term ACCAN review, Communications Alliance stated:

*"... general lack of consultation with major stakeholder groups is a significant concern for Communications Alliance and its members.*

*Industry devotes considerable time and resources to engaging with stakeholders – particularly consumer groups – in a responsible manner and believes that better outcomes will accrue if ACCAN reciprocated in this regard. Communications Alliance also submits that at times a lack of commitment to productive and solutions-oriented dealings with industry negatively affects interactions between ACCAN and the industry."*

The Associations consider that under the present CEO, there has been a genuine effort by ACCAN to improve constructive engagement with industry and that the outcome of this effort has been beneficial and welcomed by industry.

We strongly believe that there is a role for a consumer body with specific commercial and technical knowledge regarding the telecommunications industry. Consumer advocates - subject matter experts with specific and technical telecommunications knowledge - should assist to drive a constructive and meaningful dialogue with industry to improve industry practice. That is, there is a role for ACCAN to work more effectively with industry to achieve optimal consumer outcomes.

As stated above, ACCAN's engagement with industry could be improved and similarly, industry's engagement with ACCAN could also be improved. Currently, the manner in which ACCAN responds to issues through public forums uses limited or late consultation with industry, when they could be better dealt with proactively via improved, more regular and consultative (rather than adversarial) engagement. Improved sharing of information between ACCAN and industry could resolve many issues before they develop and would result in less reactive regulatory interventions.

### 2.3 Considering the consumer representation role performed by ACCAN, has ACCAN adopted an appropriate balance between representation of general consumers and representation of those with particular needs.

Due to its structure as a peak membership body, ACCAN must balance its role of addressing telecommunications specific issues for mainstream consumers against representing the many and diverse voices from its membership base. We note that the many and diverse members of ACCAN does not necessarily represent the broader interests of mainstream consumers and many have specific agendas that are not necessarily related to broader telecommunications issues.

This is exacerbated by the governance structure of ACCAN – and while its representation of issues impacting disadvantaged consumers has been effective – the result has also been that issues that impact on mainstream consumers have not received proportionate representation. And the inherent bias towards representation of specific interest groups has meant that minor issues/issues that impact on a very low number of consumers have received disproportionate attention based on spurious data and, in some cases, regulatory interventions that have driven up costs that affect the broader consumer base.

The Associations note that this is a difficult balance to achieve when resources are limited. ACCAN has done exceptional work in representing certain specific groups such as consumers with a disability and financially disadvantaged consumers and we acknowledge this. However, it is equally important that ACCAN strives to balance its representation to better reflect the needs and issues of mainstream consumers.

However, ACCAN cannot do this alone and therefore industry is open to exploring more effective ways in which ACCAN ensures the interests of mainstream consumers are heard and represented. The Associations would look to build on existing interactions already in place between ACCAN and industry, e.g. to share relevant customer trends and preferences, explore processes for formal engagement and meeting frequency. Specifically, the Associations propose that industry and ACCAN explore ways to improve the current engagement model to ensure the sharing of information occurs in a more structured way. For example, potentially via the creation of a Memorandum of Understanding or another mechanism that promotes more proactive and effective communication.

### 2.4 Is a telecommunications specific consumer representative body funded by Government required or:

- (a) Should Government fund representation only for a body or bodies representing consumers with particular needs?
- (b) Could a telecommunications representations function be carried out by a general consumer body?
- (c) Could Government more directly measure consumer views by undertaking its own consumer research?

As noted above, the Associations consider that there is a role for a telecommunications-specific consumer body with specialised, technical knowledge regarding the industry. The telecommunications sector is widely acknowledged to be a dynamic and evolving industry and a catalyst for broader societal change. It is important that all consumer interests are adequately and appropriately represented.

It may be useful to consider whether ACCAN needs more specific, clear objectives to ensure that it has mechanisms in place with industry to effectively represent the majority of Australian telecommunications users.

For example, the Associations note that the Review states "...between 2012 and 2015, ACCAN represented telecommunications consumers on 36 government, industry and member committees...". While this statement does not provide details on these committees are and the work involved in each, it seems to reflect the fact that significant resources are being used to provide representation on too many fora.

As such, we suggest a closer engagement with industry on key issues would ensure that its resources are being used effectively and efficiently.

### 3 Independent Grants and Research

#### 3.1 Have you seen any examples of how research funded through the IGP has influenced Government policy or the behavior of industry? Could changes be made to the IGP to make the funded research projects more influential?

The Associations note ACCAN's most recent strategic plan states that (one part of) its mission is to "Research emerging consumer communications issues to provide evidence-based policy advice"<sup>1</sup>. It is unclear how this has been measured and whether it has been achieved.

The Associations cannot readily point to any research completed using ACCAN grant funding that has, of itself, influenced Government policy or generated significant changes in industry behaviour. That said, there have been some incremental changes to individual service provider practice arising from ACCAN's research (for example, minor updating of contract terms, responses to homelessness, access to digital assets of bereaved customers). At times the sample sizes used in some ACCAN research have been small or statistically insignificant – resulting in the research being unable to support evidence-based policy positions. For example, in its most recent research 'Confident, but Confounded: Consumer Comprehension of Telecommunications Agreements', Recommendation 1 was "As part of its current research on the operation of the TCP Code since the Reconnecting the Customer Inquiry, the ACMA should include an evaluation of the CIS to determine the extent to which they assist consumers to undertake the key features of their agreement" and Recommendation 5 was "Despite the small sample size, this research finds a need for expert independent research to provide an evidence base when introducing or reviewing customer information obligations...". While this was an important piece of research, particularly in the context of the recent review of the TCP Code's Customer Information Provisions, the research was unable to provide any conclusions. Nor is it, due to the small sample size, a research paper of sufficient weight for the telecommunications

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<sup>1</sup> ACCAN Strategic Plan 2012-2017, <http://accan.org.au/about/strategic-plan>

industry to use when justifying a case for change to their commercial operations or systems. ACCAN has also advised via its Grants Scheme material that this type of research is used to “form a strong evidence base for our advocacy work”<sup>2</sup>. Unfortunately if the evidence ACCAN has based an advocacy position on can be called into question, ACCAN’s position in making a case for change for consumer benefit is also weakened.

The Associations also note that a number of research projects have been funded for the purpose of developing educational or targeted tools for specific communities. For example, the current 2016 funding has allocated \$7,500 to the Association of Hazaras in Victoria to develop education tools on telecommunications topics in Dari; and \$59,842.30 for the University of Sydney’s “Finding peace of mind: Navigating the marketplace of mental health apps”. While these projects are laudable and may fulfil a niche that other industry participants may not be in a position to enable, they are not likely to influence broader government policy.

Industry strongly suggests that ACCAN’s process for choosing research topics would greatly benefit from broader input from industry representation on the grants panel. We understand that the research panel while independent of ACCAN’s staff only represents an academic expertise. A broader scope of panelists may assist in ensuring that funding is not assigned to projects that have already been covered by regulator activity with industry members or research papers conducted through other forums.

We note that the Department’s Bureau of Communications Research (BCR), as experts in the field, should also have a role to play e.g. in identifying areas appropriate for research (where gaps exist or where an issue has been identified) and prioritising research topics.

An approach that could be explored would be to consolidate the research funds within the BCR and have it create a consumer/industry/BCR steering group to decide how the research funding formerly allocated to ACCAN can best be apportioned to agreed research projects.

- 3.2 Do you believe research funded through the IGP is useful to consumers? Could changes be made to the IGP to make the funded research projects more useful to consumers?
- 3.3 Is it appropriate for the Government to provide grants to a consumer representative group (or any other non-government body) to undertake research into telecommunications issues?
- 3.4 If this is appropriate, what changes (if any) would you recommend to how the funding is provided and who it is provided to?
- 3.5 Should any other activities, other than consumer representation and research, be considered for funding under section 593 of the Telco Act? If so, what should these be and what would be the rationale for funding such activities be?

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<sup>2</sup> <http://accan.org.au/grants>

The Associations understand the aim of section 593 of the Telecommunications Act but suggest that its application has some inherent limits.

For example, it is unclear whether the grants need to include a research element or could a grant be given for consumer awareness campaign? The Associations consider that grants used to develop consumer awareness material – such as broadband education – could be of significant direct benefit to consumers and, potentially, more benefit than some of the previous research conducted.

While ACCAN administers its grants within the scope of the limitations of the legislation well, the limitations of the scheme mean that the outcomes are not always optimal. For example, each ACCAN research project has a funding limit of \$60K which then puts a limit on the quality and size of any research project.

It seems that the legislation<sup>3</sup> would allow for grants to be made to other organisations, apart from consumer organisations such as ACCAN, but there is no precedent for this. We recommend the legislation be amended to clarify or provide certainty that grants can be made to other non-consumer organisations.

The Associations consider that it would be useful to apply a more flexible process to the allocation of section 593 so that grants could be made directly to industry based organisations, such as Communications Alliance or AMTA, for consumer education and awareness or other appropriate purposes. For example, the Associations are currently drafting consumer educational materials in relation to broadband speeds, calling number display, handling life threatening and unwelcome communications and purchasing numbers from other than a CSP. If funding was available, the reach and depth of consumer related material could be significantly expanded and greater awareness levels would be achieved.

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<sup>3</sup> Under s593 (2) 'The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a person or body for purposes in connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications'.